

**R317. ENVIRONMENTAL QUALITY, WATER QUALITY.**

**R317-8. UTAH POLLUTANT DISCHARGE ELIMINATION SYSTEM (UPDES).**

**R317-8-1. GENERAL PROVISIONS AND DEFINITIONS.**

1.1 COMPARABILITY WITH THE CWA. The UPDES rules promulgated pursuant to the Utah Water Quality Act are intended to be compatible with the Federal regulations adopted pursuant to CWA.

1.2 CONFLICTING PROVISIONS. The provisions of the UPDES rules are to be construed as being compatible with and complementary to each other. In the event that any of these rules are found by a court of competent jurisdiction to be contradictory, the more stringent provisions shall apply.

1.3 SEVERABILITY. In the event that any provision of these rules is found to be invalid by a court of competent jurisdiction, the remaining UPDES rules shall not be affected or diminished thereby.

1.4 ADMINISTRATION OF THE UPDES PROGRAM. The Executive Secretary of the Utah Water Quality Board has responsibility for the administration of the UPDES program, including pretreatment. The responsibility for the program is delegated to the Executive Secretary in accordance with UCA Subsection 19-5-104(11) and UCA Subsection 19-5-107(2)(a). The Executive Secretary has the responsibility for issuance, denial, modification, revocation and enforcement of UPDES permits, including general permits, Federal facilities permits, and sludge permits; and approval and enforcement authority for the pretreatment program.

In accordance with UCA Subsection 19-5-112(2), a hearing for a person who has been denied a permit or who has had a permit revoked shall be conducted before the Executive Director or his (or her) designee. The decision of the Executive Director is final and binding on all parties unless a judicial appeal is made. Appeals of permit conditions are also made to the Executive Director. The Executive Secretary is under the administrative direction of the Executive Director of the Department of Environmental Quality.

1.5 DEFINITIONS. The following terms have the meaning as set forth unless a different meaning clearly appears from the context or unless a different meaning is stated in a definition applicable to only a portion of these rules:

(1) "Administrator" means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

(2) "Applicable standards and limitations" means all standards and limitations to which a discharge, a sewage sludge use or disposal practice, or a related activity is subject under Subsection 19-5-104(6) of the Utah Water Quality Act and regulations promulgated pursuant thereto, including but not limited to effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, pretreatment standards, and standards for sewage sludge use or disposal.

(3) "Application" means the forms approved by the Utah Water Quality Board, which are the same as the EPA standard NPDES forms, for applying for a UPDES permit, including any additions, revisions or modifications.

(4) "Average monthly discharge limit" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharge measured during a calendar month divided by the number of daily discharges measured during the month.

(5) "Average weekly discharge limit" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

(6) "Best management practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, practices to control plant site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage.

(7) "Class I sludge management facility" means any POTW required to have an approved pretreatment program under R317-8-8 and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the Executive Secretary, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

(8) "Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(9) "CWA" means the Clean Water Act as subsequently amended (33 U.S.C. 1251 et seq.).

(10) "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

(11) "Direct discharge" means the discharge of a pollutant.

(12) "Discharge of a pollutant" means any addition of any pollutants to "waters of the State" from any "point source." This definition includes additions of pollutants into waters of the State from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by the State, a municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger."

(13) "Economic impact consideration" means the reasonable consideration given by the Executive Secretary to the economic impact of water pollution control on industry and agriculture; provided, however, that such consideration shall be consistent and in compliance with the CWA and EPA promulgated regulations.

(14) "Executive Secretary" means the Executive Secretary of the Utah Water Quality Board or its authorized representative.

(15) "Discharge Monitoring Report (DMR)" means EPA uniform national form or equivalent State form, including any subsequent additions, revisions or modifications, for the reporting of self-monitoring results by permittees.

(16) "Draft permit" means a document prepared under R317-8-6.3 indicating the Executive Secretary's preliminary decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A

notice of intent to terminate a permit, and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination as provided in R317-8-5.6 is not a draft permit. A proposed permit prepared after the close of the public comment period is not a draft permit.

(17) "Effluent limitation" means any restriction imposed by the Executive Secretary on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the State.

(18) "Effluent limitations guidelines" means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise effluent limitations.

(19) "Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.

(20) "Facility or activity" means any UPDES point source, or any other facility or activity, including land or appurtenances thereto, that is subject to regulation under the UPDES program.

(21) "General permit" means any UPDES permit authorizing a category of discharges within a geographical area, and issued under R317-8-2.5.

(22) "Hazardous substance" means any substance designated under 40 CFR Part 116.

(23) "Indirect discharge" means a nondomestic discharger introducing pollutants to a publicly owned treatment works.

(24) "Interstate agency" means an agency of which Utah and one or more states is a member, established by or under an agreement or compact, or any other agency, of which Utah and one or more other states are members, having substantial powers or duties pertaining to the control of pollutants.

(25) "Major facility" means any UPDES facility or activity classified as such by the Executive Secretary in conjunction with the Regional Administrator.

(26) "Maximum daily discharge limitation" means the highest allowable daily discharge.

(27) "Municipality" means a city, town, district, county, or other public body created by or under the State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes. For purposes of these rules, an agency designated by the Governor under Section 208 of the CWA is also considered to be a municipality.

(28) "National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318 and 405 of the CWA.

(29) "New discharger" means any building, structure, facility, or installation:

- (a) From which there is or may be a "discharge of pollutants;"
- (b) That did not commence the "discharge of pollutants" at a particular "site" prior to August 13, 1979;
- (c) Which is not a "new source;" and
- (d) Which has never received a finally effective UPDES permit for discharges at that "site."

This definition includes an "indirect discharger" which commenced discharging into waters of the state after August 13, 1979.

(30) "New source" means any building, structure, facility, or

installation from which there is or may be a direct or indirect discharge of pollutants, the construction of which commenced;

(a) After promulgation of EPA's standards of performance under Section 306 of CWA which are applicable to such source, or

(b) After proposal of Federal standards of performance in accordance with Section 306 of CWA which are applicable to such source, but only if the Federal standards are promulgated in accordance with Section 306 within 120 days of their proposal.

(31) "Owner or operator" means the owner or operator of any facility or activity subject to regulation under the UPDES program.

(32) "Permit" means an authorization, license, or equivalent control document issued by the Executive Secretary to implement the requirements of the UPDES regulations. "Permit" includes a UPDES "general permit." The term does not include any document which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

(33) "Person" means any individual, corporation, partnership, association, company or body politic, including any agency or instrumentality of the United States government.

(34) "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm-water runoff or return flows from irrigated agriculture.

(35) "Pollutant" means, for the purpose of these regulations, dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(a) Sewage from vessels; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

(36) "Pollution" means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the State, unless such alteration is necessary for the public health and safety. Alterations which are not consistent with the requirements of the CWA and implementing regulations shall not be deemed to be alterations necessary for the public health and safety. A discharge not in accordance with Utah Water Quality Standards, stream classification, and UPDES permit requirements, including technology-based standards shall be deemed to be pollution.

(37) "Primary industry category" means any industry category listed in R317-8-3.11.

(38) "Privately owned treatment works" means any device or system which is used to treat wastes from any facility whose operator is not the

operator of the treatment works and which is not a POTW.

(39) "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

(40) "Proposed permit" means a UPDES permit prepared after the close of the public comment period and, when applicable, any public hearing and administrative appeals, which is sent to EPA for review before final issuance by the Executive Secretary. A proposed permit is not a draft permit.

(41) "Publicly-owned treatment works" (POTW) means any facility for the treatment of pollutants owned by the State, its political subdivisions, or other public entity. For the purposes of these regulations, POTW includes sewers, pipes or other conveyances conveying wastewater to a POTW providing treatment, treatment of pollutants includes recycling and reclamation, and pollutants refers to municipal sewage or industrial wastes of a liquid nature.

(42) "Recommencing discharger" means a source which resumes discharge after terminating operation.

(43) "Regional Administrator" means the Regional Administrator of the Region VIII office of the EPA or the authorized representative of the Regional Administrator.

(44) "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements leading to compliance with the Utah Water Quality Act and rules promulgated pursuant thereto.

(45) "Secondary industry category" means any industry category which is not a primary industry category.

(46) "Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

(47) "Seven (7) consecutive day discharge limit" means the highest allowable average of daily discharges over a seven (7) consecutive day period.

(48) "Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under Section 312 of CWA.

(49) "Sewage sludge" means any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary or advanced wastewater treatment, scum, septage, portable toilet dumpings, type III marine sanitation device pumpings, and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

(50) "Sewage sludge use or disposal practice" means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

(51) "Site" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

(52) "Sludge-only facility" means any treatment works treating domestic sewage whose methods of sewage sludge use or disposal are subject to rules promulgated pursuant to Section 19-5-104 of the Utah

Water Quality Act and which is required to obtain a permit under R317-8-2.1.

(53) "Standards for sewage sludge use or disposal" means the rules promulgated pursuant to Section 19-5-104 of the Utah Water Quality Act which govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use or disposal of sewage sludge by any person.

(54) "State/EPA Agreement" means an agreement between the State and the Regional Administrator which coordinates State and EPA activities, responsibilities and programs, including those under the CWA programs.

(55) "Thirty (30) consecutive day discharge limit" means the highest allowable average of daily discharges over a thirty (30) consecutive day period.

(56) "Toxic pollutant" means any pollutant listed as toxic in R317-8-7.6 or, in the case of sludge use or disposal practices, any pollutant identified as toxic in State adopted rules for the disposal of sewage sludge.

(57) "Treatment works treating domestic sewage" means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works.

(58) "Variance" means any mechanism or provision under the UPDES regulations which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines.

(59) "Waters of the State" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this State or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish or wildlife, shall not be considered to be "waters of the State." The exception for confined bodies of water does not apply to any waters which meet the definition of "waters of the United States" under 40 CFR 122.2. Waters are considered to be confined to and retained within the limits of private property only if there is no discharge or seepage to either surface water or groundwater. Waters of the State includes "wetlands" as defined in the Federal Clean Water Act.

(60) "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstance do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(61) "Whole effluent toxicity" means the aggregate toxic effect of an effluent as measured directly by a toxicity test.

(62) "Utah Pollutant Discharge Elimination System (UPDES)" means the State-wide program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing

pretreatment requirements under the Utah Water Quality Act.

#### 1.6 DEFINITIONS APPLICABLE TO STORM-WATER DISCHARGES.

(1) "Co-Permittee" means a permittee to a UPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.

(2) "Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a UPDES permit (other than the UPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

(3) "Incorporated place" means a city or town that is incorporated under the laws of Utah.

(4) "Large municipal separate storm sewer system" means all municipal separate storm sewers that are:

(a) Located in an incorporated place with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of Census; or

(b) Located in counties with unincorporated urbanized areas with a population of 250,000 or more according to the 1990 Decennial Census by the Bureau of Census, except municipal separate storm sewers that are located in the incorporated places, townships or towns within the County; or

(c) Owned or operated by a municipality other than those described in R317-8-1.6(4)(a) or (b) and that are designated by the Executive Secretary as part of a large or medium municipal separate storm sewer system. See R317-8-3.9(6)(a) for provisions regarding this definition.

(5) "Major municipal separate storm sewer outfall" (or "major outfall") means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more).

(6) "Major outfall" means a major municipal separate storm sewer outfall.

(7) "Medium municipal separate storm sewer system" means all municipal separate storm sewers that are:

(a) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of Census;

(b) Located in counties with unincorporated urbanized areas with a population greater than 100,000 but less than 250,000 as determined by the 1990 Decennial Census by the Bureau of the Census; or

(c) Owned or operated by a municipality other than those described in R317-8-1.6(4)(a) and (b) and that are designated by the Executive Secretary as part of the large or medium municipal separate storm sewer system. See R317-8-3.9(6)(b) for provisions regarding this definition.

(8) "MS4" means a municipal separate storm sewer system.

(9) "Municipal separate storm sewer system" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal

separate storm sewer systems pursuant to paragraphs R317-8-1.6(4), (7), & (14) of this section, or designated under paragraph R317-8-3.9(1)(a)5 of this section.

(10) "Outfall" means a point source at the point where a municipal separate storm sewer discharges to waters of the State and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the State and are used to convey waters of the State.

(11) "Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

(12) "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

(13) "Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

(14) "Small municipal separate storm sewer system" means all separate storm sewers that are:

(a) Owned or operated by the United States, State of Utah, city, town, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial waste, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the State.

(b) Not defined as "large" or "medium" municipal separate storm sewer system pursuant to paragraphs R317-8-1.6(4) & (7) of this section, or designated under paragraph R317-8-3.9(1)(a)5 of this section.

(c) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

(15) "Small MS4" means a small municipal separate storm sewer system.

(16) "Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

(17) "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the UPDES program. See R317-8-3.9(6)(c) and (d) for provisions applicable to this definition.

(18) "Uncontrolled sanitary landfill means a landfill or open dump, whether in operation or closed, that does not meet the requirements for runoff or runoff controls established pursuant to subtitle D of the Solid



Waste Disposal Act.

1.7 ABBREVIATIONS AND ACRONYMS. The following abbreviations and acronyms, as used throughout the UPDES regulations, shall have the meaning given below:

- (1) "BAT" means best available technology economically achievable;
- (2) "BCT" means best conventional pollutant control technology;
- (3) "BMPs" means best management practices;
- (4) "BOD" means biochemical oxygen demands;
- (5) "BPT" means best practicable technology currently available;
- (6) "CFR" means Code of Federal Regulations;
- (7) "COD" means chemical oxygen demand;
- (8) "CWA" means the Federal Clean Water Act;
- (9) "DMR" means discharge monitoring report;
- (10) "NPDES" means National Pollutant Discharge Elimination System;
- (11) "POTW" means publicly owned treatment works;
- (12) "SIC" means standard industrial classification;
- (13) "TDS" means total dissolved solids;
- (14) "TSS" means total suspended solids;
- (15) "UPDES" means Utah Pollutant Discharge Elimination System;
- (16) "UWQB" means the Utah Water Quality Board;
- (17) "WET" means whole effluent toxicity.

1.8 UPGRADE AND RECLASSIFICATION. Upgrading or reclassification of waters of the State by the Utah Water Quality Board may be done periodically, but only using procedures and in a manner consistent with the requirements of State and Federal law.

1.9 PUBLIC PARTICIPATION. In addition to hearings required under the State Administrative Procedures Act and proceedings otherwise outlined or referenced in these regulations, the Executive Secretary will investigate and provide written response to all citizen complaints. In addition, the Executive Secretary shall not oppose intervention in any civil or administrative proceeding by any citizen where permissive intervention may be authorized by statute, rule or regulation. The Executive Secretary will publish notice of and provide at least 30 days for public comment on any proposed settlement of any enforcement action.

1.10 INCORPORATION OF FEDERAL REGULATIONS BY REFERENCE. The State adopts the following Federal standards and procedures, effective as of December 8, 1999, which are incorporated by reference:

(1) 40 CFR 129 (Toxic Effluent Standards) with the following exceptions:

(a) Substitute "UPDES" for all federal regulation references to "NPDES".

(b) Substitute "Executive Secretary" for all federal regulation references to "State Director".

(c) Substitute "R317-8-4.4, R317-8-6, and R317-8-7" for all federal regulation references to "40 CFR Parts 124 and 125".

(2) 40 CFR 133 (Secondary Treatment Regulation) with the following exceptions:

(a) 40 CFR 133.102 for which R317-1-3.2 is substituted.

(b) 40 CFR 133.105.

(c) Substitute "UPDES" or "Utah Pollutant Discharge Elimination System" for all federal regulation references for "NPDES" or "National Pollutant Discharge Elimination System", respectively.

(d) Substitute "Executive Secretary" for all federal regulation references to "State Director" in 40 CFR 133.103.

(3) 40 CFR 136 (Guidelines Establishing Test Procedures for the Analysis of Pollutants)

(4) 40 CFR 403.6 (National Pretreatment Standards and Categorical Standards) with the following exception:

(a) Substitute "Executive Secretary" for all federal regulation references to "Director".

(5) 40 CFR 403.7 (Removal Credits)

(6) 40 CFR 403.13 (Variances from Categorical Pretreatment Standards for Fundamentally Different Factors)

(7) 40 CFR 403.15 (Net/Gross Calculation)

(8) 40 CFR Parts 405 through 471

(9) 40 CFR 503 (Standards for the Use or Disposal of Sewage Sludge), effective as of the date that responsibility for implementation of the federal Sludge Management Program is delegated to the State except as provided in R317-1-6.4, with the following changes:

(a) Substitute "Executive Secretary" for all federal regulation references to "Director".

(10) 40 CFR 122.30

(11) 40 CFR 122.32

(a) In 122.32(a)(2), replace the reference 122.26(f) with R317-8-3.9(5).

(12) 40 CFR 122.33

(a) In 122.33(b)(2)(i), replace the reference 122.21(f) with R317-8-3.1(6).

(b) In 122.33(b)(2)(i), replace the reference 122.21(f)(7) with R317-8-3.1(6)(g).

(c) In 122.33(b)(2)(ii), replace the reference 122.26(d)(1) & (2) with R317-8-3.9(3)(a) & (b)

(d) In 122.33(b)(3), replace the reference 122.26 with R317-8.

(e) In 122.33(b)(3), replace the reference 122.26(d)(1)(iii) and (iv); and (d)(2)(iv) with R317-8-3.9(3)(a)3 and 4; and (3)(b)4.

(13) 40 CFR 122.34

(a) In 122.34(a), replace the reference 122.26(d) with R317-8-3.9(3).

(b) In 122.34(b)(3)(i), replace the reference 122.26(d)(2) with R317-8-3.9(3)(b).

(c) In 122.34(b)(4)(i), replace the reference 122.26(b)(15)(i) with R317-8-3.9(6)(e)1.

(d) In 122.34(f), replace the references 122.41 through 122.49 with R317-8-4.1 through R317-8-5.4.

(e) In 122.34(g)(2), replace the reference 122.7 with R317-8-3.3.

(14) 40 CFR 122.35

(a) In 122.35, replace the reference 122 with R317-8.

(15) 40 CFR 122.36

(16) For the references R317-8-1.10(11), (12), (13), (14), and (15) make the following substitutions:

(a) "The Executive Secretary of the Water Quality Board" for the "NPDES permitting authority"

(b) "UPDES" for "NPDES"

## **R317-8-2. SCOPE AND APPLICABILITY.**

2.1 APPLICABILITY OF THE UPDES REQUIREMENTS. The UPDES program requires permits for the discharge of pollutants from any point source

into waters of the State. The program also applies to owners or operators of any treatment works treating domestic sewage, whether or not the treatment works is otherwise required to obtain a UPDES permit in accordance with R317-8-8. Prior to promulgation of State rules for sewage sludge use and disposal, the Executive Secretary shall impose interim conditions in permits issued for publicly owned treatment works or take such other measures as the Executive Secretary deems appropriate to protect public health and the environment from any adverse affects which may occur from toxic pollutants in sewage sludge.

(1) Specific inclusions. The following are examples of specific categories of point sources requiring UPDES permits for discharges. These terms are further defined in R317-8-3.5 through R317-8-8.10.

- (a) Concentrated animal feeding operations;
- (b) Concentrated aquatic animal production facilities;
- (c) Discharges into aquaculture projects;
- (d) Storm water discharges; and
- (e) Silvicultural point sources.

(2) Specific exclusions. The following discharges do not require UPDES permits:

(a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to storage facility or a seafood processing facility, or when secured in waters of the state for the purpose of mineral or oil exploration or development.

(b) Discharges of dredged or fill material into waters of the State which are regulated under Section 404 of CWA.

(c) The introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the State are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by the State, a municipality, or other party not leading to treatment works.

(d) Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).

(e) Any introduction of pollutants from non-point source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, rangelands, and forest lands, but not discharges from concentrated animal feeding operations as defined in R317-8-3.6, discharges from concentrated aquatic animal production facilities as defined in R317-8-3.7, discharges to aquaculture projects as defined in R317-8-3.8, and discharges from silvicultural point sources as defined in R317-8-3.10.

(f) Return flows from irrigated agriculture.

(g) Discharges into a privately owned treatment works, except as

the Executive Secretary may otherwise require under R317-8-4.2(12).

(h) Authorizations by permit or by rule which are prepared to assure that underground injection will not endanger drinking water supplies, and which are issued under the state's Underground Injection Control program; and underground injections and disposal wells which are permitted by the Utah Water Quality Board pursuant to Part VII of the Utah Wastewater Disposal Regulations or the Board of Oil, Gas and Mining, Class II.

(i) Discharges which are not regulated by the U.S. EPA under Section 402 of the Clean Water Act.

(3) Requirements for permits on a case-by-case basis.

(a) Various sections of R317-8 allow the Executive Secretary to determine, on a case-by-case basis, that certain concentrated animal feeding operations, concentrated aquatic animal production facilities, separate storm sewers and certain other facilities covered by general permits that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(b) Whenever the Executive Secretary decides that an individual permit is required as specified in R317-8-2.1(3)(a), the Executive Secretary shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger shall apply for a permit within 60 days of receipt of notice, unless permission for a later date is granted by the Executive Secretary. The question whether the determination was proper will remain open for consideration during the public comment period and in any subsequent hearing.

(c) Prior to a case-by-case determination that an individual permit is required for a storm water discharge, the Executive Secretary may require the discharger to submit a permit application or other information regarding the discharge. In requiring such information, the Executive Secretary shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit within 60 days of notice, unless permission for a later date is granted by the Executive Secretary. The question whether the determination was proper will remain open for consideration during the public comment period and in any subsequent hearing.

2.2 PROHIBITIONS. No permit may be issued by the Executive Secretary:

(1) When the conditions of the permit do not provide for compliance with the applicable requirements of the Utah Water Quality Act, as amended, or rules promulgated pursuant thereto;

(2) When the Regional Administrator has objected to issuance of the permit in writing under the procedures specified in 40 CFR 123.44;

(3) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of Utah and all affected states;

(4) When, in the judgment of the Secretary of the U.S. Army, acting through the Chief of Engineers, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

(5) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

(6) For any discharge inconsistent with a plan or plan amendment

approved under Section 208(b) of CWA.

(7) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet Utah water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the UPDES regulations and for which the Executive Secretary has performed a wasteload allocation for the pollutants to be discharged, must demonstrate, before the close of the public comment period, that:

(a) There are sufficient remaining wasteload allocations to allow for the discharge; and

(b) The existing dischargers into the segment are subject to schedules of compliance designed to bring the segment into compliance with Utah Water Quality Standards. (See R317-2.)

2.3 VARIANCE REQUESTS BY NON-POTW'S. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the time period specified in this section:

(1) Fundamentally different factors.

(a) A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based shall be filed as follows:

1. For a request for a variance from best practicable control technology currently available (BPT) by the close of the public comment period under R317-8-6.5.

2. For a request for a variance from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT) by no later than:

a. July 3, 1989, for a request on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989 is not later than that provided under previously promulgated regulations; or

b. 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

3. Requests should be filed with the Executive Secretary. A request filed with EPA shall be considered to be a request filed under the UPDES program.

(b) The request shall explain how the requirements of the applicable regulatory and statutory criteria have been met.

(2) Non-conventional pollutants. A request for a variance from the BAT requirements for CWA section 301(b)(2)(F) pollutants (commonly called "non-conventional" pollutants) pursuant to Section 301(c) of CWA because of the economic capability of the owner or operator, or pursuant to section 301(g) of the CWA (provided, however, that 301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (4AAP) (when determined by the Executive Secretary to be a pollutant covered by section 301(b)(2)(F)) and any other pollutant listed by the Administrator under Section 301((g)(4) of the CWA) must be filed as follows:

(a) For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

1. Filing an initial request with the Executive Secretary stating

the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and the nature of the modification being requested. This request must have been filed not later than:

a. September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline promulgated before December 27, 1977: or

b. 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977: and

2. Submitting a completed request no later than the close of the public comment period under R317-8-6.5 demonstrating that the requirements of R317-8-6.8 and the applicable requirements of R317-8-8.8 have been met. Notwithstanding this provision, the complete application for a request shall be filed 180 days before the Executive Secretary must make a decision (unless the Executive Secretary establishes a shorter or longer period). For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with R317-8-2.3(2)(a)(2) and need not be preceded by an initial request under R317-8-2.3(2)(a)(2).

3. Requests should be filed with the Executive Secretary. A request filed with EPA shall be considered to be a request filed under the UPDES program.

(3) Delay in construction of POTW. An extension of the Federal statutory deadlines based on delay in completion of a POTW into which the source is to discharge must have been requested on or before June 26, 1978 or 180 days after the relevant POTW requested an extension under R317-8-2.7, whichever is later, but in no event may this date have been later than January 30, 1988. The request shall explain how the requirements of 40 CFR Part 125, Subpart J have been met.

(4) Innovative technology. An extension from the Federal statutory deadline for best available technology, or for best conventional pollutant control technology, based on the use of innovative technology may be requested no later than the close of the public comment period under Section R317-8-6.5 for the discharger's initial permit requiring compliance with best available technology or best conventional pollutant control technology. The request shall demonstrate that the requirements of Section R317-8-6.8 and 8-5.6 have been met.

(5) Thermal discharges. A variance for the thermal component of any discharge must be filed with a timely application for a permit under R317-8-3 except that if thermal effluent limitations are established by EPA or are based on water quality standards the request for a variance may be filed by the close of the public comment period under R317-8-6.5.

(6) Water Quality Related Effluent Limitations. A modification of requirements for achieving water quality-related effluent limitations may be requested no later than the close of the public comment period under R317-8-6.5 on the permit from which the modification is sought.

2.4 EXPEDITED VARIANCE PROCEDURES AND TIME EXTENSIONS. Notwithstanding the time requirements in R317-8-2.3, the Executive Secretary may notify a permit applicant before a draft permit is issued under R317-8-6.3 that the draft permit will likely contain limitations which are eligible for variances.

(1) In the notice the Executive Secretary may require that the applicant, as a condition of consideration of any potential variance request, submit a request explaining how the requirements of R317-8-7 applicable to the variance have been met. The Executive Secretary may require the submittal within a specified reasonable time after receipt

of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

(2) A discharger who cannot file a timely complete request required under R317-8-2.3(2) may request an extension. The extension may be granted or denied at the discretion of the Executive Secretary. Extensions will be no more than six months in duration.

## 2.5 GENERAL PERMITS

(1) Coverage. The Executive Secretary may issue a general permit in accordance with the following:

(a) Area. The general permit will be written to cover a category of discharges or sludge use or disposal practices or facilities described in the permit under paragraph (b) of this subsection, except those covered by individual permits, within a geographic area. The area will correspond to existing geographic or political boundaries, such as:

1. Designated planning areas under Sections 208 and 303 of CWA;
2. City, county, or state political boundaries;
3. State highway systems;
4. Standard metropolitan statistical areas as defined by the U.S. Office of Management and Budget;
5. Urbanized areas as designated by the U.S. Bureau of the Census, consistent with the U.S. Office of Management and Budget;
6. Any other appropriate division or combination of boundaries as determined by the Executive Secretary.

(b) Sources. The general permit will be written to regulate, within the area described in R317-8-2.5(a), either;

1. Storm water point sources; or
2. A category of point sources other than storm water point sources, or a category of treatment works, treating domestic sewage, if the sources or treatment works treating domestic sewage all:
  - a. Involve the same or substantially similar types of operations;
  - b. Discharge the same types of wastes or engage in the same types of sludge use or disposal practices.
  - c. Require the same effluent limitations, operating conditions, or standards for sludge use or disposal;
  - d. Require the same or similar monitoring; and
  - e. In the opinion of the Executive Secretary, are more appropriately controlled under a general permit than under individual permits.

## (2) Administration.

(a) General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of R317-8-6.

(b) Authorization to discharge, or authorization to engage in sludge use and disposal practices.

1. Except as provided in paragraphs (2)(b)5. and (2)(b)6. of this section, discharges (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the Executive Secretary a written notice of intent to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, (or in the case of sludge use or disposal practice), under the terms of the general permit unless the general permit, in accordance with paragraph (2)(b)5. of this section, contains a provision that a notice of intent is not required or the Executive

Secretary notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with paragraph (2)(b)6. of this section. A complete and timely, notice of intent (NOI), to be covered in accordance with general permit requirements, fulfills the requirements for permit applications for purposes of R-317-8-3.

2. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility of discharges, and the receiving stream(s). General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfill occurring on Federal lands where an operator cannot be identified may contain alternative notice of intent requirements. All notices of intent shall be signed in accordance with R317-8-3.3.

3. General permits shall specify the deadlines for submitting notices of intent to be covered and the date(s) when a discharger is authorized to discharge under the permit;

4. General permits shall specify whether a discharger (or treatment works treating domestic sewage) that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use for disposal practice), in accordance with the permit either upon receipt of the notice of intent by the Executive Secretary, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the Executive Secretary. Coverage may be terminated or revoked in accordance with paragraph (2)(c) of this section.

5. Discharges other than discharges from publicly owned treatment works, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Executive Secretary, be authorized to discharge under a general permit without submitting a notice of intent where the Executive Secretary finds that a notice of intent requirement would be inappropriate. In making such a finding, the Executive Secretary shall consider: the type of discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The Executive Secretary shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

6. The Executive Secretary may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a notice of intent to be covered. A discharger (or treatment works treating domestic sewage) so notified may request an individual permit under paragraph R317-8-2.5(2)(c).

(c) Requiring an individual permit.

1. The Executive Secretary may require any person authorized by a general permit to apply for and obtain an individual UPDES permit. Any interested person may petition the Executive Secretary to take action under R317-8-2.4. Cases where an individual UPDES permit may be required



include the following:

a. The discharge(s) is a significant contributor of pollutants. In making this determination, the Executive Secretary may consider the following factors:

i. The location of the discharge with respect to waters of the State;

ii. The size of the discharge;

iii. The quantity and nature of the pollutants discharged to waters of the State; and

iv. Other relevant factors;

b. The discharger or treatment works treating domestic sewage is not in compliance with the conditions of the general UPDES permit;

c. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

d. Effluent limitation guidelines are promulgated for point sources covered by the general UPDES permit;

e. A Utah Water Quality Management Plan containing requirements applicable to such point sources is approved;

f. Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practices covered by the general UPDES permit; or

2. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under R317-8-3.1 to the Executive Secretary with reasons supporting the request. The request shall be submitted no later than ninety (90) days after the notice by the Executive Secretary in accordance with R317-8-6.5. If the reasons cited by the owner or operator are adequate to support the request, the Executive Secretary may issue an individual permit.

3. When an individual UPDES permit is issued to an owner or operator otherwise subject to a general UPDES permit, the applicability of the general permit to the individual UPDES permittee is automatically terminated on the effective date of the individual permit.

4. A source excluded from a general permit solely because he already has an individual permit may request that the individual permit be revoked. The permittee shall then request to be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

## 2.6 DISPOSAL OF POLLUTANTS INTO WELLS, INTO POTWS OR BY LAND APPLICATION.

(1) The Executive Secretary may issue UPDES permits to control the disposal of pollutants into wells when necessary to protect the public health and welfare, and to prevent the pollution of ground and surface waters.

(2) When part of a discharger's process wastewater is not being discharged into waters of the State (including groundwater) because it is disposed of into a well, into a POTW, or by land application, thereby reducing the flow or level of pollutants being discharged into waters of the State, applicable effluent standards and limitations for the discharge in a UPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards

in the permit shall be calculated by one of the following methods:

(a) If none of the waste from a particular process is discharged into waters of the State and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.

(b) In all cases other than those described in R317-8-2.6(2)(a), effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater to be treated and discharged into waters of the State and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under R317-8-7.3 to make them more or less stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters.

This method may be algebraically expressed as:  $P = E \times N/T$

Where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the State and T is the total wastewater flow.

(3) R317-8-2.6(2) shall not apply to the extent that promulgated effluent limitations guidelines:

(a) Control concentrations of pollutants discharged but not mass;  
or

(b) Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.

(4) R317-8-2.6(2) does not alter a dischargers obligation to meet any more stringent requirements established under R317-8-4.

2.7 VARIANCE REQUESTS BY POTWS. A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under the following provision:

(1) Water Quality Based Effluent Limitation. A permit modification of the requirements for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period under R317-8-6.5 on the permit for which the modification is sought.

(2) Delay in construction. An extension of a Federal statutory deadline based on delay in the construction of the POTW must have been requested on or before August 3, 1987.

#### 2.8 DECISION ON VARIANCES

(1) The Executive Secretary may deny or forward to the Administrator (or his delegate) with a written concurrence, a completed request for:

(a) Extensions under CWA section 301(i) based on delay in completion of a publicly owned treatment works;

(b) After consultation with the Regional Administrator, extensions based on the use of innovative technology; or

(c) Variances under R317-8-2.3(4) for thermal pollution.

(2) The Executive Secretary may deny or forward to the Regional Administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

(a) A variance based on the presence of "fundamentally different

factors" from those on which an effluent limitations guideline was based;

(b) A variance based on the economic capability of the applicant;

(c) A variance based upon certain water quality factors (See CWA section 301(g)); or

(d) A variance based on water quality related effluent limitations.

(e) Except for information required by R317-8-3.1(4)(c) which shall be retained for a period of at least five years from the date the application is signed, applicants shall keep records of all data used to complete permit applications and any supplemental information for a period of at least three years from the date the application is signed.

### **R317-8-3. APPLICATION REQUIREMENTS.**

#### **3.1 APPLYING FOR A UPDES PERMIT**

##### **(1) Application requirements**

(a) Any person who is required to have a permit, including new applicants and permittees with expiring permits shall complete, sign, and submit an application to the Executive Secretary as described in this regulation and R317-8-2 Scope and Applicability. On the date of UPDES program approval by EPA, all persons permitted or authorized under NPDES shall be deemed to hold a UPDES permit, including those expired permits which EPA has continued in effect according to 40 CFR 122.6. For the purpose of this section the Executive Secretary will accept the information required under R317-8-3.5 for existing facilities, which has been submitted to EPA as part of a NPDES renewal. The applicant may be requested to update any information which is not current.

(b) Any person who (1) discharges or proposes to discharge pollutants and (2) owns or operates a sludge-only facility and does not have an effective permit, shall submit a complete application to the Executive Secretary in accordance with this section and R317-8-6. A complete application shall include a BMP program, if necessary, under R317-8-4.2(10). The following are exceptions to the application requirements:

1. Persons covered by general permits under R317-8-4.2(10);

2. Discharges excluded under R317-8-2.1(2);

3. Users of a privately owned treatment works unless the Executive Secretary requires otherwise under R317-8-4.2(12).

(2) Time to apply. Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Executive Secretary. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Facilities described under R317-8-3.9(6)11 shall submit applications at least 90 days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90 or 180 day requirements to avoid delay. See also R317-8-3.2 and R317-8-3.9(2)1.g. and 2.

(3) Who Applies. When a facility or activity is owned by one (1) person but is operated by another person, it is the operator's duty to obtain a permit.

(4) Duty to reapply.

(a) Any POTW with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Executive Secretary. The Executive Secretary shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(b) All other permittees with currently effective permits shall submit a new application 180 days before the existing permit expires, except that:

1. The Executive Secretary may grant permission to submit an application later than the deadline for submission otherwise applicable, but no later than the permit expiration date; and

2. The Executive Secretary may grant permission to submit the information required by R317-8-3.5(7), (9) and (10) after the permit expiration date.

(c) All applicants for permits, other than POTWs, new sources, and sludge-only facilities must complete EPA Forms 1 and either 2B or 2C or 2F or equivalent State forms as directed by the Executive Secretary to apply under R317-8-3. Forms may be obtained from the Executive Secretary. In addition to any other applicable requirements in this section, all POTWs and other treatment works treating domestic sewage, including sludge-only facilities, must submit with their applications the information listed at 40 CFR 501.15(a)(2) within the time frames established in R317-8-3.1(7)(a) and (b).

(d) Continuation of expiring permits. The conditions of an expired permit continue in force until the effective date of a new permit if:

1. The permittee has submitted a timely application under subsection (2) of this section which is a complete application for a new permit; and

2. The Executive Secretary, through no fault of the permittee, does not issue a new permit with an effective date under R317-8-6.11 on or before the expiration date of the previous permit.

3. Effect Permits continued under this paragraph remain fully effective and enforceable until the effective date of a new permit.

4. Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit the Executive Secretary may choose to do any or all of the following:

a. Initiate enforcement action based upon the permit which has been continued;

b. Issue a notice of intent to deny the new permit under R317-8-6.3(2);

c. Issue a new permit under R317-8-6 with appropriate conditions; or

d. Take other actions authorized by the UPDES regulations.

(5) Completeness. The Executive Secretary will not issue a UPDES permit before receiving a complete application for a permit except for UPDES General Permits. A permit application is complete when the Executive Secretary receives an application form with any supplemental information which is completed to his or her satisfaction.

(6) Information requirements. All applicants for UPDES permits shall provide the following information to the Executive Secretary, using the application form provided by the Executive Secretary.

(a) The activities being conducted which require the applicant to

obtain UPDES permit.

(b) Name, mailing address, and location of the facility for which the application is submitted.

(c) From one (1) to four (4) SIC codes which best reflect the principal products or services provided by the facility.

(d) The operators name, address, telephone number, ownership status, and status as to Federal, State, private, public, or other entity.

(e) Whether the facility is located on Indian lands.

(f) A listing of all other relevant environmental permits, or construction approvals issued by the Executive Secretary or other state or federal permits.

(g) A topographic map, or other map if a topographic map is unavailable, extending one (1) mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures, each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

(h) A brief description of the nature of the business.

(i) Additional information may also be required of new sources, new dischargers and major facilities to determine any significant adverse environmental effects of the discharge pursuant to new source regulations promulgated by the Executive Secretary.

(7) Permits Under Section 19-5-107 of the Utah Water Quality Act.

(a) POTWs with currently effective UPDES permits shall submit the application information required by R317-8-3.1(4)(c) with the next application submitted in accordance with R317-8-3.1(4) of this section or within 120 days after promulgation of a standard for sewage sludge use or disposal applicable to the POTW's sludge use or disposal practice(s), whichever occurs first.

(b) Any other existing treatment works treating domestic sewage not covered in R317-8-3.1(7)(a) shall submit an application to the Executive Secretary within 120 days after promulgation of a standard for sewage sludge use or disposal applicable to its sludge use or disposal practice(s) or upon request of the Executive Secretary prior to the promulgation of an applicable standard for sewage sludge use or disposal if the Executive Secretary determines that a permit is necessary to protect to public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

(c) Any treatment works treating domestic sewage that commences operations after promulgation of an applicable standard for sewage sludge use or disposal shall submit an application to the Executive Secretary at least 180 days prior to the date proposed for commencing operations.

(8) Recordkeeping. Except for information required by R317-8-3.1(7)(c) which shall be retained for a period of at least five years from the date the application is signed or longer as required by the Executive Secretary, applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this regulation for a period of at least three (3) years from the date the application is signed.

(9) Service of process. Every applicant and permittee shall provide the Executive Secretary an address for receipt of any legal paper

for service of process. The last address provided to the Executive Secretary pursuant to this provision shall be the address at which the Executive Secretary may tender any legal notice, including but not limited to service of process in connection with any enforcement action. Service, whether by bond or by mail, shall be complete upon tender of the notice, process or order and shall not be deemed incomplete because of refusal to accept or if the addressee is not found.

(10) Application Forms. The State will use EPA-developed NPDES application forms or State equivalents in administering the UPDES program.

3.2 APPLICATION REQUIREMENTS FOR NEW SOURCES AND NEW DISCHARGES. New manufacturing, commercial, mining and silvicultural dischargers applying for UPDES permits (except for new discharges of facilities subject to the requirements of R317-8-3.5 or new discharges of storm water associated with industrial activity which are subject to R317-8-3.9(2)(a) except as provided by R317-8-3.9(2)(a)2, shall provide the following information to the Executive Secretary, using application forms provided by the Executive Secretary:

(1) Expected outfall location. The latitude and longitude to the nearest 15 seconds and the name of the receiving water.

(2) Discharge dates. The expected date of commencement of discharge.

(3) Flows, Sources of Pollution and Treatment Technologies

(a) Expected treatment of wastewater. Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged.

(b) Line drawing. A line drawing of the water flow through the facility with a water balance as described in R317-8-3.5(2).

(c) Intermittent Flows. If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration and maximum daily flow rate of each discharge occurrence (except for storm water runoff, spillage, or leaks).

(4) Production. If a new source performance standard or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard as required by R317-8-4.3(2)(b) for each of the first three years. Alternative estimates may also be submitted if production is likely to vary.

(5) Effluent Characteristics. The requirements in R317-8-3.5(7) that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of R317-8-4.3(7) are met. All levels (except for discharge flow, temperature and pH) must be estimated as concentration and as total mass.

(a) Each applicant must report estimated daily maximum, daily average and source of information for each outfall for the following pollutants or parameters. The Executive Secretary may waive the reporting requirements for any of these pollutants and parameters if the applicant submits a request for such a waiver before or with his

application which demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements.

1. Biochemical Oxygen Demand (BOD).
2. Chemical Oxygen Demand (COD).
3. Total Organic Carbon (TOC).
4. Total Suspended Solids (TSS).
5. Flow.
6. Ammonia (as N).
7. Temperature (winter and summer).
8. pH.

(b) Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV, R317-8-3.12(4) (certain conventional and nonconventional pollutants).

(c) Each applicant must report estimated daily maximum, daily average and source of information for the following pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:

1. The pollutants listed in Table III, R317-8-3.12(3) (the toxic metals, in the discharge from any outfall: Total cyanide, and total phenols);

2. The organic toxic pollutants in R317-8-3.12(2) (except bis (chloromethyl) ether, dichlorofluoromethane and trichlorofluoromethane). This requirement is waived for applicants with expected gross sales of less than \$100,000 per year for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

(d) The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-P-Dioxin (TCDD) may be discharged if he uses or manufactures one of the following compounds, or if he knows or has reason to believe that TCDD will or may be present in an effluent:

1. 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS #93-76-5);
2. 2-(2,4,5-trichlorophenoxy) propanic acid (Silvex, 2,4,5-TP) (CAS #93-72-1);
3. 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4);
4. 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnell) (CAS #299-84-3);
5. 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or
6. Hexachlorophene (HCP) (CAS #70-80-4);

(e) Each applicant must report any pollutants listed in Table V, R317-8-3.12(5) (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

(f) No later than two years after the commencement of discharge from the proposed facility, the applicant is required to complete and submit Items V and VI of NPDES application Form 2c (see R317-8-3.5). However, the applicant need not complete those portions of Item V requiring tests which he has already performed and reported under the discharge monitoring requirements of his UPDES permit.

(6) Engineering Report. Each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge.

(7) Other information. Any optional information the permittee wishes to have considered.

(8) Certification. Signature of certifying official under R317-8-3.4.

### 3.3 CONFIDENTIALITY OF INFORMATION

(1) Any information submitted to the Executive Secretary pursuant to the UPDES regulations may be claimed as confidential by the person submitting the information. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the Executive Secretary may make the information available to the public without further notice. If a claim is asserted, it will be treated according to the standards of 40 CFR Part 2.

(2) Information which includes effluent data and records required by UPDES application forms provided by the Executive Secretary under R317-8-3.1 may not be claimed as confidential.

(3) Information contained in UPDES permits may not be claimed as confidential.

### 3.4 SIGNATORIES TO PERMIT APPLICATIONS AND REPORTS

(1) Applications. All permit applications shall be signed as follows:

(a) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(c) For a municipality, State, Federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(2) Reports. All reports required by permits and other information requested by the Executive Secretary under R317-8-3.9(3) shall be signed by a person described in subsection (1), or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) The authorization is made in writing by a person described in subsection (1) of this section:

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or



an individual or position having overall responsibility for environmental matters for the company; and

(c) The written authorization is submitted to the Executive Secretary.

(3) Changes to authorization. If an authorization under subsection (2) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (2) of this section must be submitted to the Executive Secretary prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

### 3.5 APPLICATION REQUIREMENTS FOR EXISTING MANUFACTURING, COMMERCIAL, MINING, AND SILVICULTURAL DISCHARGERS

Existing manufacturing, commercial, mining, and silvicultural dischargers applying for UPDES permits shall provide the following information to the Executive Secretary, using application forms provided by the Executive Secretary:

(1) Outfall location. The latitude and longitude to the nearest fifteen (15) seconds and the name of the receiving water.

(2) Line drawing. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under R317-8-3.5. The water balance shall show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined, the applicant may provide a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

(3) Average flows and treatment. A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water; and storm water runoff; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations or production areas may be described in general terms, (for example, "dye-making reactor," "distillation tower.") For a privately owned treatment works, this information shall include the identity of each user of the treatment works. The average flow of point sources composed of storm water may be estimated. The basis for the rainfall event and the method of estimation must be indicated.

(4) Intermittent flows. If any of the discharges described in R317-8-3.5(3) are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence, except for storm water runoff, spillage, or leaks.

(5) Maximum production levels. If an EPA effluent guideline applies to the applicant and is expressed in terms of production or other measure of operation, a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure shall reflect the actual production of the facility as required by R317-8-4.3(2).

(6) Improvements. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates.

(7) Effluent characteristics. Information on the discharge of pollutants specified in this subsection shall be provided, except information on storm water discharges which is to be provided as specified in R317-8-3.9. When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR 136. When no particular analytical method is required the applicant may use any suitable method but must provide a description of the method. The Executive Secretary may allow the applicant to test only one outfall and report that the quantitative data also applies to the substantially identical outfalls. The requirements in paragraphs (c) and (d) of this subsection that an applicant shall provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant shall report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, twenty-four (24)-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, the Executive Secretary may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50 percent from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes (applicants submitting permit applications for storm water discharges under R317-8-3.9(3) may collect flow weighted composite samples using different protocols with

respect to the time duration between the collection of sample aliquots, subject to the approval of the Executive Secretary). However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first thirty minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in R317-8-3.9(2)(a). For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in R317-8-3.9 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The Executive Secretary may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rainfall), protocols for collecting samples under 40 CFR 136, and additional time for submitting data on a case-by-case basis. An applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant.

(a) Every applicant shall report quantitative data for every outfall for the following pollutants:

1. Biochemical Oxygen Demand (BOD)
2. Chemical Oxygen Demand
3. Total Organic Carbon
4. Total Suspended Solids
5. Ammonia (as N)
6. Temperature (both winter and summer)
7. pH

(b) The Executive Secretary may waive the reporting requirements for one or more of the pollutants listed in R317-8-3.5(7)(a) if the applicant has demonstrated that the waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

(c) Each applicant with processes in one or more primary industry category, listed in R317-8-3.11 of this regulation, and contributing to a discharge, shall report quantitative data for the following pollutants in each outfall containing process wastewater:

1. The organic toxic pollutants in the fractions designated in Table 1 of R317-8-3.12 for the applicant's industrial category or categories unless the applicant qualifies as a small business under R317-8-3.5(8). Table II of R317-8-3.12 of this part lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes.

2. The pollutants listed in Table III of R317-8-3.12 (the toxic

metals, cyanide, and total phenols).

(d) 1. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of R317-8-3.12 (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

2. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of R317-8-3.12 (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under paragraph (b) of this section, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater, the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentration less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under R317-8-3.5(8) is not required to analyze for pollutants listed in Table II of R317-8-3.12 (the organic toxic pollutants).

(e) Each applicant shall indicate whether it knows or has reason to believe that any of the pollutants in R317-8-3.12(5) of this regulation, certain hazardous substances and asbestos are discharged from each outfall. For every pollutant expected to be discharged, the applicant shall briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data for the pollutant.

(f) Each applicant shall report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin(TCDD) if it:

1. Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP); 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

2. Knows or has reason to believe that TCDD is or may be present in an effluent.

(8) Small business exemption. An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in R317-8-3.5(7)(c) and (d) to submit quantitative data for the pollutants listed in R317-8-3.12(2), organic toxic pollutants:

(a) For coal mines, a probable total annual production of less than 100,000 tons per year.

(b) For all other applicants, gross total annual sales averaging less than \$100,000 per year, in second quarter 1980 dollars.

(9) Used or manufactured toxics. The application shall include a

listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or byproduct. The Executive Secretary may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the Executive Secretary has adequate information to issue the permit.

(10) Biological toxicity tests. The applicant shall identify any biological toxicity tests which it knows or has reason to believe have been made within the last three (3) years on any of the applicant's discharges or on a receiving water in relation to a discharge.

(11) Contract analyses. If a contract laboratory or consulting firm performed any of the analyses required by R317-8-3.5(7), the identity of each laboratory or firm and the analyses performed shall be included in the application.

(12) Additional information. In addition to the information reported on the application form, applicants shall provide to the Executive Secretary, upon request, other information as the Executive Secretary may reasonably be required to assess the discharges of the facility and to determine whether to issue a UPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

### 3.6 CONCENTRATED ANIMAL FEEDING OPERATIONS

(1) Permit required. Concentrated animal feeding operations are point sources subject to the UPDES permit program.

(2) Definitions.

(a) "Animal feeding operation" means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

1. Animals, other than aquatic animals, have been, are or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period; and

2. Crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility; or

3. Two (2) or more animal feeding operations under common ownership if they adjoin each other or if they use a common area or system for the disposal of wastes and meet the conditions of a(1) and (2) above.

b. "Concentrated animal feeding operation" means an "animal feeding operation" which meets the criteria in this Section or which the Executive Secretary designates under subsection (3) of this section.

(c) "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers; the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4 plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(d) "Manmade" means constructed by man and used for the purpose of transporting wastes.

(3) Case-by-Case designation of concentrated animal feeding operations.

(a) The Executive Secretary may designate any animal feeding operation as a concentrated animal feeding operation upon determining

that it is a significant contributor of pollution to the waters of the State. In making this designation the Executive Secretary shall consider the following factors:

1. The size of the animal feeding operation and the amount of wastes reaching waters of the State;
2. The location of the animal feeding operation relative to waters of the State;
3. The means of conveyance of animal wastes and process waste waters into waters of the State;
4. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into waters of the State; and
5. Other relevant factors.

(b) No animal feeding operation with less than the numbers of animals set forth in R317-8-3.6(5)(a) or (b) will be designated as a concentrated animal feeding operation unless:

1. Pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; or
2. Pollutants are discharged directly into the waters of the State which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operations.

(c) A permit application will not be required from a concentrated animal feeding operation designated under this section until the Executive Secretary or authorized representative has conducted an on-site inspection of the operation and determined that the operation could and should be regulated under the UPDES permit program.

(4) Information required. New and existing concentrated animal feeding operations shall provide the following information to the Executive Secretary, using the application form provided:

(a) The type and number of animals in open confinement and housed under roof.

(b) The number of acres used for confinement feeding.

(c) The design basis for the runoff diversion and control system, if one exists, including the number of acres of contributing drainage, the storage capacity, and the design safety factor.

(5) Criteria for determining a concentrated animal feeding operation. An animal feeding operation is a concentrated animal feeding operation for purposes of this regulation if either of the following criteria are met.

(a) Criteria of number only. The facility meets the criteria if more than the numbers of animals specified in any of the following categories are confined:

1. 1,000 slaughter and feeder cattle,
2. 700 mature dairy cattle, whether milked or dry cows,
3. 2,500 swine each weighing over 25 kilograms, (approximately 55 pounds),
4. 500 horses,
5. 10,000 sheep or lambs,
6. 55,000 turkeys,
7. 100,000 laying hens or broilers, if the facility has continuous over flow watering,
8. 30,000 laying hens or broilers, if the facility has a liquid manure handling system,

9. 5,000 ducks, or
10. 1,000 animal units.

(b) Criteria of number and condition of the discharge. The facility meets the criteria if more than the following number and types of animals are confined:

1. 300 slaughter or feeder cattle,
2. 200 mature dairy cattle, whether milked or dry cows,
3. 750 swine, each weighing over 25 kilograms (approximately 55 pounds),
4. 150 horses,
5. 3,000 sheep or lambs,
6. 16,500 turkeys,
7. 30,000 laying hens or broilers, if the facility has continuous overflow watering,
8. 9,000 laying hens or broilers, if the facility has a liquid manure handling system,
9. 1,500 ducks, or
10. 300 animal units; and
11. Either one of the following conditions are met:
  - Pollutants are discharged into waters of the state through a manmade ditch, flushing system or other similar manmade device; or
  - Pollutants are discharged directly into waters of the State which originate outside of and pass over, across or through the facility or otherwise come into direct contact with the animals confined in the operation.

(6) Special provision. No animal feeding operation is a concentrated animal feeding operation as defined in R317-8-3.6(5)(a) and (b) if such animal feeding operation discharges only in the event of a twenty-five (25) year, twenty-four (24) hour storm event.

### 3.7 CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITIES

(1) Permit required. Concentrated aquatic animal production facilities, as defined in this section, are point sources subject to the UPDES permit program.

(2) Definitions. "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in R317-8-3.7(5) or which the Executive Secretary designates under R317-8-3.7(3).

(3) Case-by-Case designation of concentrated aquatic animal production facilities.

(a) The Executive Secretary may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to the waters of the State. In making this designation the Executive Secretary will consider the following factors:

1. The location and quality of the receiving waters of the State;
2. The holding, feeding, and production capacities of the facility;
3. The quantity and nature of the pollutants reaching waters of the State; and
4. Other relevant factors.

(b) A permit application will not be required from a concentrated aquatic animal production facility designated under this section until the Executive Secretary or authorized representative has conducted an on-site inspection of the facility and has determined that the facility could and should be regulated under the UPDES permit program.

(4) Information required. New and existing concentrated aquatic animal production facilities shall provide the following information to the Executive Secretary using the application form provided:

- (a) The maximum daily and average monthly flow from each outfall.
- (b) The number of ponds, raceways, and similar structures.
- (c) The name of the receiving water and the source of intake water.
- (d) For each species of aquatic animals, the total yearly and maximum harvestable weight.
- (e) The calendar month of maximum feeding and the total mass of food fed during that month.

(5) Criteria for determining a concentrated aquatic animal production facility. A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility for purposes of this regulation if it contains, grows, or holds aquatic animals in either of the following categories:

(a) Cold water aquatic animals. Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year but does not include:

- 1. Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and
- 2. Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.
- 3. Cold water aquatic animals include, but are not limited to the Salmonidae family of fish.

(b) Warm water aquatic animals. Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year, but does not include:

- 1. Closed ponds which discharge only during periods of excess runoff; or
- 2. Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.
- 3. "Warm water aquatic animals" include, but are not limited to, the Ameiuride, Centrachidae and Cyprinidae families of fish.

### 3.8 AQUACULTURE PROJECTS

(1) Permit required. Discharges into aquaculture projects, as defined in this section, are subject to the UPDES permit program.

(2) Definitions.

(a) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater plants and animals.

(b) "Designated project areas" means the portions of the waters of the State within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan of operation, including, but not limited to, physical confinement, which on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

### 3.9 STORM WATER DISCHARGES

(1) Permit requirement.

(a) Prior to October 1, 1992, a permit shall not be required for a discharge composed entirely of storm water, except for:



1. A discharge with respect to which a permit has been issued prior to February 4, 1987;

2. A discharge associated with industrial activity;

3. A discharge from a large municipal separate storm sewer system;

4. A discharge from a medium municipal separate storm sewer system;

5. A discharge which the Executive Secretary determines contributes to a violation of water quality standard or is a significant contributor of pollutants to waters of the State. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under this section or agricultural storm water runoff which is exempted from the definition of point source. The Executive Secretary may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Executive Secretary may consider the following factors:

a. The location of the discharge with respect to waters of the State;

b. The size of the discharge;

c. The quantity and nature of the pollutants discharged to waters of the State; and

d. Other relevant factors.

(b) The Executive Secretary may not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or do not come into contact with any overburden, raw material, intermediate products, finished product, by product, or waste products located on the site of such operations.

(c) Large and medium municipal separate storm sewer systems.

1. Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.

2. The Executive Secretary may either issue one system-wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to: all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or individual discharges from municipal separate storm sewers within the system.

3. The operator of a discharge from a municipal separate storm sewer which is part of a large or medium municipal separate storm sewer system must either:

a. Participate in a permit application (to be a permittee or a co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system which covers all, or a portion of all, discharges from the municipal separate storm sewer system;

b. Submit a distinct permit application which only covers

discharges from the municipal separate storm sewers for which the operator is responsible; or

4. A regional authority may be responsible for submitting a permit application under the following guidelines:

i. The regional authority together with co-applicants shall have authority over a storm water management program that is in existence, or shall be in existence at the time part 1 of the application is due;

ii. The permit applicant or co-applicants shall establish their ability to make a timely submission of part 1 and part 2 of the municipal application;

iii. Each of the operators of municipal separate storm sewers within the systems described in R317-8-1.6(4)(a),(b) and (c) or R317-8-1.6(7)(a),(b), and (c), that are under the purview of the designated regional authority, shall comply with the application requirements of R317-8-3.9(3).

5. One permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The Executive Secretary may issue one system-wide permit covering all, or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

6. Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.

7. Co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.

(d) Discharges through large and medium municipal separate storm sewer systems. In addition to meeting the requirements of R317-8-3.9(2), an operator of a storm water discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing such discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility; and any existing UPDES permit number.

(e) Other municipal separate storm sewers. The Executive Secretary may issue permits for municipal separate storm sewers that are designated under R317-8-3.9(1)(a)(5) on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges.

(f) Non-municipal separate storm sewers. For storm water discharges associated with industrial activity from point sources which discharge through a non-municipal or non-publicly owned separate storm sewer system, the Executive Secretary, in his discretion, may issue: a single UPDES permit, with each discharger a co-permittee to a permit issued to the operator of the portion of the system that discharges into waters of the State; or, individual permits to each discharger of storm water associated with industrial activity through the non-municipal

conveyance system.

1. All storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to waters of the State, with each discharger to the non-municipal conveyance a co-permittee to that permit.

2. Where there is more than one operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity must submit applications.

3. Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

(g) Combined sewer systems. Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain UPDES permits and that are not subject to the provisions of this section.

(h) Small municipal, small construction, TMDL pollutants of concern, and significant contributors of pollution.

1. On and after October 1, 1994, for discharges composed entirely of storm water, that are not required by paragraph (1)(a) of this section to obtain a permit, operators shall be required to obtain a UPDES permit only if:

a. The discharge is from a small MS4 required to be regulated pursuant to 40 CFR 122.32 (see R317-8-1.10(11)).

b. The discharge is a storm water discharge associated with small construction activity pursuant to paragraph R317-8-3.9(6)(e).

c. The Executive Secretary or authorized representative determines that storm water controls are needed for the discharge based on wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern; or

d. The Executive Secretary or authorized representative determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State.

2. Operators of small MS4s designated pursuant to paragraphs (1)(h)1.a., (1)(h)1.c., and (1)(h)1.d. of this section shall seek coverage under an UPDES permit in accordance with 40 CFR 122.33, 122.34, and 122.35 (see R317-8-1.10(12) through R317-8-1.10(14)). Operators of non-municipal sources designated pursuant to paragraph (1)(h)1.b; (1)(h)1.c; and (1)(h)1.d of this section shall seek coverage under a UPDES permit in accordance with paragraph (2)(a) of this section.

3. Operators of storm water discharges designated pursuant to paragraphs (1)(h)1.c. and (1)(h)1.d. of this section shall apply to the Executive Secretary for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the Executive Secretary (see R317-8-3.6(3)).

(2) Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with small construction activity.

(a) Individual application. Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water which the

Executive Secretary is evaluating under R317-8-3.9(1)(a)5 and is not a municipal separate storm sewer, and which is not part of a group application described under paragraph R317-8-3.9(2)(b) of this section, shall submit an UPDES application in accordance with R317-8-3.1 and supplemented by the provisions of the remainder of this paragraph. Applicants for discharges composed entirely of storm water shall submit Forms 1 and 2F. Applicants for discharges composed of storm water and non-storm water shall submit EPA Forms 1, 2C, and 2F. Applicants for new sources or new discharges composed of storm water and non-storm water shall submit EPA Forms 1, 2D, and 2F.

1. Except as provided in R317-8-3.9(2)(a)2, 3, and 4, the operator of a storm water discharge associated with industrial activity subject to this section shall provide:

a. A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) of the facility including: each of its drainage and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall; each past or present area used for outdoor storage or disposal of significant materials; each existing structural control measure to reduce pollutants in storm water runoff; materials loading and access areas; areas where pesticides, herbicides, soil conditioners and fertilizers are applied; each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;

b. An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: Significant materials that in the three years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of such materials; materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

c. A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by a UPDES permit; tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test;

d. Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application;

e. Quantitative data based on samples collected during storm events and collected in accordance with R317-8-3.1 from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

i. Any pollutant limited in an effluent guideline to which the facility is subject;

ii. Any pollutant listed in the facility's UPDES permit for its process wastewater (if the facility is operating under an existing UPDES permit);

iii. Oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

iv. Any information on the discharge required under R317-8-3.5(7)(d) and (e);

v. Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and

vi. The date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event (in hours);

f. Operators of a discharge which is composed entirely of storm water are exempt from R317-8-3.5(2),(3),(4),(5),(7)(a),(c), and (f); and

g. Operators of new sources or new discharges which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in R317-8-3.9(2)(a)1e instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in R317-8-3.5(2)(a)1e within two years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the UPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of R317-8-3.2(3)(b)&(c) and 3.2(5).

2. An operator of an existing or new storm water discharge that is associated with industrial activity solely under R317-8-3.9(6)(c)11 of this section or is associated with small construction activity solely under paragraph R317-8-3.9(6)(e) of this section, is exempt from the requirements of R317-8-3.5 and R317-8-3.9(2)(a)1. Such operator shall provide a narrative description of:

a. The location (including a map) and the nature of the construction activity;

b. The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

c. Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable State and local erosion and sediment control requirements;

d. Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements;

e. An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the

permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and

f. The name of the receiving water.

3. The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with R317-8-3.9(2)(a)1, unless the facility:

a. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at anytime since November 16, 1987;

b. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or

c. Contributes to a violation of a water quality standard.

4. The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

5. Applicants shall provide such other information the Executive Secretary may reasonably require to determine whether to issue a permit and may require any facility subject to R317-8-3.9(2)(a)2 to comply with R317-8-3.9(2)(a)1.

(3) Application requirements for large and medium municipal separate storm sewer discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Executive Secretary under R317-8-3.9(1)(a)5, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a coapplicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under R317-8-3.9(1)(a)5 shall include:

(a) Part 1. Part 1 of the application shall consist of:

1. General information. The applicants' name, address, telephone number of contact person, ownership status and status as a State or local government entity.

2. Legal authority. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in R317-8-3.9(3)(b)1, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria.

3. Source identification.

a. A description of the historic use of ordinances, guidance or other controls which limited the discharge of non-storm water discharges to any Publicly Owned Treatment Works serving the same area as the municipal separate storm sewer system.

b. A USGS 7.5 minute topographic map (or equivalent topographic map

with a scale between 1:10,000 and 1:24,000 if cost effective) extending one mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:

i. The location of known municipal storm sewer system outfalls discharging to waters of the State;

ii. A description of the land use activities (e.g. divisions indicating undeveloped, residential, commercial, agriculture and industrial uses) accompanied with estimates of population densities and projected growth for a ten year period within the drainage area served by the separate storm sewer. For each land use type, and estimate of an average runoff coefficient shall be provided;

iii. The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;

iv. The location and the permit number of any known discharge to the municipal storm sewer that has been issued a UPDES permit;

v. The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and

vi. The identification of publicly owned parks, recreational areas, and other open lands.

#### 4. Discharge characterization.

a. Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events.

b. Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used.

c. A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been:

i. Assessed and reported in CWA 305(b) reports submitted by the State, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of Clean Water Act (CWA) goals (fishable and swimmable waters), and causes of nonsupport of designated uses;

ii. Listed under section 304(1)(1)(A)(i), section 304(1)(1)(A)(ii), or section 304(1)(1)(B) of the CWA that is not expected to meet water quality standards or water quality goals;

iii. Listed in Utah Nonpoint Source Assessments that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards);

iv. Identified and classified according to eutrophic condition of publicly owned lakes listed in State reports required under section 314(a) of the CWA (include the following: A description of those publicly owned lakes for which uses are known to be impaired; a description of procedures, processes and methods to control the discharge

of pollutants from municipal separate storm sewers into such lakes; and a description of methods and procedures to restore the quality of such lakes);

v. Recognized by the applicant as highly valued or sensitive waters;

vi. Defined by the state or U.S. Fish and Wildlife Service's National Wetlands Inventory as wetlands; and

vii. Found to have pollutants in bottom sediments, fish tissue or biosurvey data.

d. Field screening. Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two grab samples shall be collected during a 24 hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR part 136, the applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls or other outfall points (for any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

i. A grid system consisting of perpendicular north-south and east-west lines spaced 1/4 mile apart shall be overlayed on a map of the municipal storm sewer system, creating a series of cells;

ii. All cells that contain a segment of the storm sewer system shall be identified; one field screening point shall be selected in each cell; major outfalls may be used as field screening points;

iii. Field screening points should be located downstream of any sources of suspected illegal or illicit activity;

iv. Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;

v. Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or building in the area; history of the area; and land use types;

vi. For medium municipal separate storm sewer systems, no more than 250 cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points; cells established by the grid



that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible); and

vii. Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in R317-8-3.9(3)(a)4di-vi, because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen no more than 500 or 250 major outfalls respectively (or all major outfalls in the system, if less); in such circumstances, the applicant shall establish a grid system consisting of north-south and east-west lines spaced 1/4 mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells; the applicant will then select major outfalls in as many cells as possible until at least 500 major outfalls (large municipalities) or 250 major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls.

e. Characterization plan. Information and a proposed program to meet the requirements of R317-8-3.9(3)(b)3. Such description shall include: the location of outfalls or field screening points appropriate for representative data collection under R317-8-3.9(3)(b)3.a, a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfall or field screening points for such sampling should reflect water quality concerns to the extent practicable.

5. Management programs.

a. A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Such controls may include, but are not limited to: Procedures to control pollution resulting from construction activities; floodplain management controls; wetland protection measures; best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under State law as well as local requirements.

b. A description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented.

6. Financial resources. A description of the financial resources currently available to the municipality to complete part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs.

(b) Part 2. Part 2 of the application shall consist of:

1. Adequate legal authority. A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance

or series of contracts which authorizes or enables the applicant at a minimum to:

a. Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;

b. Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

c. Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water;

d. Control through interagency agreements among coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;

e. Require compliance with conditions in ordinances, permits, contracts or orders; and

f. Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.

2. Source identification. The location of any major outfall that discharges to waters of the State that was not reported under R317-8-3.9(3)(a)3b 1. Provide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) which best reflects the principal products or services provided by each facility which may discharge, to the municipal separate storm sewer, storm water associated with industrial activity;

3. Characterization data. When "quantitative data" for a pollutant are required, the applicant must collect a sample of effluent in accordance with R317-8-3.5(7) and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including:

a. Quantitative data from representative outfalls designated by the Executive Secretary (based on information received in part 1 of the application, the Executive Secretary shall designate between five and ten outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system or, where there are less than five outfalls covered in the application, the Executive Secretary shall designate all outfalls) developed as follows:

i. For each outfall or field screening point designated, samples shall be collected of storm water discharges from three storm events occurring at least one month apart in accordance with R317-8-3.5(7) (the Executive Secretary may allow exemptions to sampling three storm events when climatic conditions create good cause for such exemptions);

ii. A narrative description shall be provided of the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event;

iii. For samples collected and described under R317-8-3.9(3)(b)3.a

i and ii, quantitative data shall be provided for: the organic pollutants listed in Table II; the pollutants listed in Table III (other toxic pollutants metals, cyanide, and total phenols) of R317-8-3.13, and for the following pollutants:

- Total suspended solids (TSS)
- Total dissolved solids (TDS)
- COD
- BOD5
- Oil and grease
- Fecal coliform
- Fecal streptococcus
- pH
- Total Kjeldahl nitrogen
- Nitrate plus nitrite
- Dissolved phosphorus
- Total ammonia plus organic nitrogen
- Total phosphorus

iv. Additional limited quantitative data required by the Executive Secretary for determining permit conditions (the Executive Secretary may require that quantitative data shall be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation and other parameters necessary to insure representativeness);

b. Estimates of the annual pollutant load of the cumulative discharges to waters of the State from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the State from all identified municipal outfalls during a storm event for BOD5, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modelling, data analysis, and calculation methods;

c. A proposed schedule to provide estimates for each major outfall identified in either R317-8-3.9(3)(b)2 or R317-8-3.9(3)(a)3b 1 of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under R317-8-3.9(3)(b)3a of this section; and

d. A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment.

4. Proposed management program. A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Executive Secretary when developing

permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:

a. A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

i. A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

ii. A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in R317-8-3.9(3)(b)4d;

iii. A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;

iv. A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible.

v. A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under R317-8-3.9(3)(b)4c); and

vi. A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.

b. A description of a program, including a schedule, to detect and remove illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

i. A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system; this program description shall address all types of illicit discharges, however the following category of non-storm water discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the State: water line flushing, landscape irrigation, diverted stream flows, rising ground waters,

uncontaminated ground water infiltration to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions shall address discharges or flows from fire fighting only where such discharges or flows are identified as significant sources of pollutants to waters of the State);

ii. A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens;

iii. A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation);

iv. A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

v. A description of a program to promote, publicize and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

vi. A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

vii. A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary;

c. A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

i. Identify priorities and procedures for inspection and establishing and implementing control measures for such discharges;

ii. Describe a monitoring program for storm water discharges associated with the industrial facilities identified in R317-8-3.9(b)4c to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing UPDES permit for a facility; oil and grease, COD, pH, BOD5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under R317-8-3.5(7)(d) 1, 2, and (e).

d. A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in

storm water runoff from construction sites to the municipal storm sewer system, which shall include:

i. A description of procedures for site planning which incorporate consideration of potential water quality impacts;

ii. A description of requirements for nonstructural and structural best management practices;

iii. A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

iv. A description of appropriate educational and training measures for construction site operators.

v. Assessment of controls. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment shall also identify known impacts of storm water controls on ground water.

vi. Fiscal analysis. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under R317-8-3.9(8)(b) 3 and 4. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds.

vii. Where more than one legal entity submits an application, the application shall contain a description of the rules and responsibilities of each legal entity and procedures to ensure effective coordination.

viii. Where requirements under R317-8-3.9(3)(a)4e, 3.9(3)(b)3b, and 3.9(3)(b)4 are not practicable or are not applicable, the Executive Secretary may exclude any operator of a discharge from a municipal separate storm sewer which is designated under R317-8-3.9(1)(a)5, R317-8-1.6(4)(b) or R317-8-1.6(7)(b) from such requirements. The Executive Secretary shall not exclude the operator of a discharge from a municipal separate storm sewer located in incorporated places with populations greater than 100,000 and less than 250,000 according to the latest decennial census by Bureau of Census; or located in counties with unincorporated urbanized areas with a population of 250,000 or more according to the latest decennial census by the Bureau of Census, from any of the permit application requirements except where authorized.

(4) Application deadlines. Any operator of a point source required to obtain a permit under R317-8-3.9(1)(a) that does not have an effective UPDES permit authorizing discharges from its storm water outfalls shall submit an application in accordance with the following deadlines:

(a) Storm water discharges associated with industrial activities.

1. Except as provided in paragraph (4)(a)2. Of this section, for any storm water discharge associated with industrial activity identified in paragraphs R317-8-3.9(6)(d)1 through 11 of this section that is not authorized by a storm water general permit, a permit application made pursuant to paragraph R317-8-3.9(2) of this section must be submitted to the Executive Secretary by October 1, 1992;

2. For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, powerplant, or uncontrolled

sanitary landfill, the permit application must be submitted to the Executive Secretary by March 10, 2003.

(b) For any discharge from a large municipal separate storm sewer system:

1. Part 1 of the application shall be submitted to the Executive Secretary by November 18, 1991;

2. Based on information received in the part 1 application the Executive Secretary will approve or deny a sampling plan within 90 days after receiving the part 1 application;

3. Part 2 of the application shall be submitted to the Executive Secretary by November 16, 1992.

(c) For any discharge from a medium municipal separate storm sewer system:

1. Part 1 of the application shall be submitted to the Executive Secretary by May 18, 1992.

2. Based on information received in the part 1 application the Executive Secretary will approve or deny a sampling plan within 90 days after receiving the part 1 application.

3. Part 2 of the application shall be submitted to the Executive Secretary by May 17, 1993.

(d) A permit application shall be submitted to the Executive Secretary within 180 days of notice, unless permission for a later date is granted by the Executive Secretary for;

1. A storm water discharge which the Executive Secretary determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State.

2. A storm water discharge subject to R317-8-3.9(2)(a)5.

(e) Facilities with existing UPDES permits for storm water discharges associated with industrial activity shall maintain existing permits. New applications shall be submitted 180 days before the expiration of such permits. Facilities with expired permits or permits due to expire before May 18, 1992, shall submit applications in accordance with the deadline set forth in R317-8-3.9(4)(a).

(f) For any storm water discharge associated with small construction activity identified in paragraph R317-8-3.9(6)(e)1. of this section, see R317-8-3.1(2). Discharges from these sources require permit authorization by March 10, 2003, unless designated for coverage before then.

(g) For any discharge from a regulated small MS4, the permit application made under 40 CFR 122.33 (see R317-8-1.10(12)) must be submitted to the Executive Secretary by:

1. March 10, 2003 if designated under 40 CFR 122.32 (a)(1) (see R317-8-1.10(11)) unless your MS4 serves a jurisdiction with a population under 10,000 and the Executive Secretary has established a phasing schedule under 40 CFR 123.35 (d)(3); or

2. Within 180 days of notice, unless the Executive Secretary grants a later date, if designated under 40 CFR 122.32(a)(2) and 40 CFR 122.33(c)(2) (see R317-8-1.10(11) & (12)).

(5) Petitions.

(a) Any operator of a municipal separate storm sewer system may petition the Executive Secretary to require a separate UPDES permit for any discharge into the municipal separate storm sewer system.

(b) Any person may petition the Executive Secretary to require a UPDES permit for a discharge which is composed entirely of storm water

which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State.

(c) The owner or operator of a municipal separate storm sewer system may petition the Executive Secretary to reduce the Census estimates of the population served by such separate system to account for storm water discharge to combined sewers that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the UPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

(d) Any person may petition the Executive Secretary for the designation of a large, medium, or small municipal separate storm sewer system as defined by R317-8-1.6(4), (7), and (14).

(e) The Executive Secretary shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of the petitions to designate a small MS4 in which case the Executive Secretary shall make a final determination on the petition within 180 days after its receipt.

(6) Provisions Applicable to Storm Water Definitions.

(a) The Executive Secretary may designate a municipal separate storm sewer system as part of a large system due to the interrelationship between the discharges of designated storm sewer and the discharges from the municipal separate storm sewers described under R317-8-1.6(4)(a) or (b). In making the determination under R317-8-1.6(4)(b) the Executive Secretary may consider the following factors:

1. Physical interconnections between the municipal separate storm sewers;
2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in R317-8-1.6(3)(a);
3. The quantity and nature of pollutants discharged to waters of the State;
4. The nature of the receiving waters; and
5. Other relevant factors; or

The Executive Secretary may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in R317-8-1.6(4).

(b) The Executive Secretary may designate a municipal separate storm sewer system as part of a medium system due to the interrelationship between the discharges of designated storm sewer and the discharges from the municipal separate storm sewers describer under R317-8-1.6(7)(a) or (b). In making the determination under R317-8-1.6(7)(b) the Executive Secretary may consider the following factors;

1. Physical interconnections between the municipal separate storm sewers;
2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm



sewers described in R317-8-1.6(7)(a);

3. The quantity and nature of pollutants discharged to waters of the State;

4. The nature of the receiving waters; or

5. Other relevant factors; or

The Executive Secretary may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in R317-8-1.6(7)(a), (b), and (c).

(c) Storm water discharges associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the UPDES program under this part R317-8. For the categories of industries identified in this section, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste materials, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste water (as defined in 40 CFR 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purpose of this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, State, or municipally owned or operated that meet the description of the facilities listed in paragraphs (d)1. through(11.) of this section) include those facilities designated under the provisions of paragraph (1)(a)5. of this section.

d. The following categories of facilities are considered to be engaging in "industrial activity" for the purposes of this section (see R317-8-3.9(1)(a)2 and (6)(c)).

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards, or toxic pollutant effluent standards under 40 CFR subchapter N except facilities with toxic pollutant effluent standards which are exempted under category R317-8-3.9(6)(c)11;

2. Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, 373;

3. Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining

operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;

5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA;

6. Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

7. Steam electric power generating facilities, including coal handling sites;

8. Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under R317-8-3.9(6)(c) 1 through 7 or R317-8-3.9(6)(c) 9 through 11 are associated with industrial activity;

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with requirements for disposal of sewage sludge.

10. Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;

11. Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-25.

(e) Storm water discharge associated with small construction activity means the discharge of storm water from:

1. Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The Executive Secretary may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where:

a. The value of the rainfall erosivity factor ("R" in the Revised Universal Soil Loss Equation) is less than five during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE), page 21-64, dated January 1997. Copies may be obtained from EPA's Water Resource Center, Mail Code RC4100, 401 M St. S.W., Washington, DC 20460. A copy is also available for inspection at the U.S. EPA Water Docket, 401 M Street S.W., Washington, DC. 20460, or the Office of Federal Register, 800 N. Capitol Street N.W. Suite 700, Washington, DC. An Operator must certify to the Executive Secretary that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five; or

b. Storm water controls are not needed based on a "total maximum daily load" (TMDL) approved by EPA that addresses the pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration~~[s]~~ of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this paragraph, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the Executive Secretary that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

2. Any other construction activity designated by the Executive Secretary based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the State.

(7) Conditional exclusion for "no exposure" of industrial activities and materials to storm water. Discharges composed entirely of storm water are not storm water discharges associated with industrial activity

if there is "no exposure" of industrial materials and activities to rain, snow, snow melt and/or runoff, and the discharger satisfies the conditions in paragraphs (7)(a) through (7)(d) of this section. "No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snow melt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

(a) Qualification. To qualify for this exclusion, the operator of the discharge must:

1. Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snow melt, and runoff;

2. Complete and sign (according to R317-8-3.3) a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in paragraph (7)(b) of this section;

3. Submit the signed certification to the Executive Secretary once every five years;

4. Allow the Executive Secretary or authorized representative to inspect the facility to determine compliance with the "no exposure" conditions;

5. Allow the Executive Secretary or authorized representative to make any "no exposure" inspection reports available to the public upon request; and

6. For facilities that discharge through an MS4, upon request, submit a copy of the certification of "no exposure" to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

(b) Industrial materials and activities not requiring storm resistant shelter. To qualify for this exclusion, storm resistant shelter is not required for:

1. Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak ("Sealed" means banded or otherwise secured and without operational taps or valves);

2. Adequately maintained vehicles used in material handling; and

3. Final products, other than products that would be mobilized in storm water discharge (e.g., rock salt).

(c) Limitations

1. Storm water discharges from construction activities identified in paragraphs R317-8-3.9(6)(d)10. and R317-8-3.9(6)(e) are not eligible for this conditional exclusion.

2. This conditional exclusion from the requirement for an UPDES permit is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be "no exposure" discharges, individual permit requirements should be adjusted accordingly.

3. If circumstances change and industrial materials or activities become exposed to rain, snow, snow melt, and/or runoff, the conditions for this exclusion no longer apply. In such cases, the discharge become subject to enforcement for un-permitted discharge. Any conditionally

exempt discharger who anticipates changes in circumstances should apply for and obtain permit authorization prior to the change of circumstances.

4. Notwithstanding the provisions of this paragraph, the Executive Secretary retains the authority to require permit authorization (and deny this exclusion) upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

(d) Certification. The no exposure certification must require the submission of the following information, at a minimum, to aid the Executive Secretary in determining if the facility qualifies for the no exposure exclusion:

1. The legal name, address and phone number of the discharger (see R317-8-3.1(3)).

2. The facility name and address, the county name and the latitude and longitude where the facility is located;

3. The certification must indicate that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

a. Using, storing, or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water;

b. Materials or residuals on the ground or in storm water inlets from spills/leaks;

c. Materials or products from past industrial activity;

d. Materials handling equipment (except adequately maintained vehicles);

e. Materials or products during loading/unloading or transporting activities;

f. Materials or products stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge to pollutants);

g. Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;

h. Materials or products handled/stored on roads or railways owned or maintained by the discharger;

i. Waste material (except waste in covered, non-leaking containers, e.g., dumpsters);

j. Application or disposal of process wastewater (unless otherwise permitted); and

k. Particulate matter or visible deposits or residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow.

4. All "no exposure" certifications must include the following certification statement, and be signed in accordance with the signatory requirements of R317-8-3.3 "I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an exclusion from UPDES storm water permitting; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under paragraph (7)(b) of this section). I understand that I am obligated to submit a no exposure certification form once every five years to the Executive Secretary and, if requested, to the operator of the local MS4 into which

this facility discharges (where applicable). I understand that I must allow the Executive Secretary or authorized representative or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and make such inspection reports publicly available upon request. I understand that I must obtain coverage under a UPDES permit prior to any point source discharge of storm water from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(8) The Executive Secretary may designate small MS4's other than those described in 40 CFR 122.32(a)(1) (see also R317-8-1.10(11)) to be covered under the UPDES storm water permit program, and require a UPDES storm water permit. Designations of this kind will be based on whether a storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts; and shall apply to any small MS4 located outside of an urbanized area serving a population density of at least 1,000 people per square mile and a population of at least 10,000.

(a) Criteria used in designation may include;

1. discharge(s) to sensitive waters,
2. areas with high growth or growth potential,
3. areas with a high population density,
4. areas that are contiguous to an urbanized area,
5. small MS4's that cause a significant contribution of pollutants to waters of the State,
6. small MS4's that do not have effective programs to protect water quality by other programs, or
7. other appropriate criteria.

(b) Permits for designated MS4's under this paragraph shall be under the same requirements as small MS4's designated under 40 CFR 122.32(a)(1) (see also R317-8-1.10(11)).

### 3.10 SILVICULTURAL ACTIVITIES

(1) Permit requirements. Silvicultural point sources, as defined in this section, are point sources subject to the UPDES permit program.

(2) Definitions.

(a) "Silvicultural point source" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the State. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff.

(b) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

(c) "Log sorting and log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water or stored on land where water is applied intentionally on the logs.

### 3.11 APPLICATION REQUIREMENTS FOR NEW AND EXISTING POTWS.

(1) The following POTWS shall provide the results of valid whole effluent biological toxicity testing to the Executive Secretary.

(a) All POTWS with design influent flows equal to or greater than one million gallons per day; and

(b) All POTWS with approved pretreatment programs or POTWS required to develop a pretreatment program;

(2) In addition to the POTWS listed in R317-8-3.11(1)(a) and (b) the Executive Secretary may require other POTWS to submit the results of toxicity tests with their permit applications, based on consideration of the following factors:

(a) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment facility, and types of industrial contributors);

(b) The dilution of the effluent in the receiving water (ratio of effluent flow to receiving stream flow);

(c) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the waterbody segment and the relative contribution of the POTW;

(d) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a water designated as an outstanding natural resource; or

(e) Other considerations (including but not limited to the history of toxic impact and compliance problems at the POTW), which the Executive Secretary determines could cause or contribute to adverse water quality impacts.

(3) For POTWS required under R317-8-3.11(1) or (2) to conduct toxicity testing. POTWS shall use EPA's methods or other established protocols which are scientifically defensible and sufficiently sensitive to detect aquatic toxicity. Such testing must have been conducted since the last UPDES permit reissuance or permit modification under R317-8-5.6(1) whichever occurred later. Prior to conducting toxicity testing, permittees shall contact the Executive Secretary regarding the testing methodology to be used.

(4) All POTWS with approved pretreatment programs shall provide to the Executive Secretary a written technical evaluation of the need to revise local limits.

3.12 PRIMARY INDUSTRY CATEGORIES. Any UPDES permit issued to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of the UPDES regulations and Sections 301(b)(2)(A),(C),(D),(E) and (F) of the CWA whether or not applicable effluent limitations guidelines have been promulgated.

- (1) Adhesives and sealants
- (2) Aluminum forming
- (3) Auto and other laundries
- (4) Battery manufacturing
- (5) Coal mining
- (6) Coil coating

- (7) Copper forming
  - (8) Electrical and electronic components
  - (9) Electroplating
  - (10) Explosives manufacturing
  - (11) Foundries
  - (12) Gum and wood chemicals
  - (13) Inorganic chemicals manufacturing
  - (14) Iron and steel manufacturing
  - (15) Leather tanning and finishing
  - (16) Mechanical products manufacturing
  - (17) Nonferrous metals manufacturing
  - (18) Ore mining
  - (19) Organic chemicals manufacturing
  - (20) Paint and ink formulation
  - (21) Pesticides
  - (22) Petroleum refining
  - (23) Pharmaceutical preparations
  - (24) Photographic equipment and supplies
  - (25) Plastics processing
  - (26) Plastic and synthetic materials manufacturing
  - (27) Porcelain enameling
  - (28) Printing and publishing
  - (29) Pulp and paper mills
  - (30) Rubber processing
  - (31) Soap and detergent manufacturing
  - (32) Steam electric power plants
  - (33) Textile mills
  - (34) Timber products processing
- 3.13 UPDES PERMIT APPLICATION TESTING REQUIREMENTS

TABLE I  
Testing Requirements for Organic Toxic Pollutants  
by Industrial Category for Existing Dischargers

Industrial category	GC/MS fraction (1)			
	Volatile	Acid	Base/	Pesticide
Adhesives and sealants	(*)	(*)	(*)	...
Aluminum Forming	(*)	(*)	(*)	...
Auto and Other Laundry	(*)	(*)	(*)	(*)
Battery Manufacturing	(*)	...	(*)	...
Coal Mining	(*)	(*)	(*)	(*)
Coil Coating	(*)	(*)	(*)	...
Copper Forming	(*)	(*)	(*)	...
Electric and Electronic Components	(*)	(*)	(*)	(*)
Electroplating	(*)	(*)	(*)	...
Explosives Manufacturing	...	(*)	(*)	...
Foundries	(*)	(*)	(*)	...
Gum and Wood Chemicals	(*)	(*)	(*)	...
Inorganic Chemicals Manufacturing	(*)	(*)	(*)	...
Iron and Steel Manufacturing	(*)	(*)	(*)	...



Leather Tanning and Finishing	(*)	(*)	(*)	(*)
Mechanical Products Manufacturing	(*)	(*)	(*)	(*)
Nonferrous Metals Manufacturing	(*)	(*)	(*)	(*)
Ore Mining	(*)	(*)	(*)	(*)
Organic Chemicals Manufacturing	(*)	(*)	(*)	(*)
Paint and Ink Formulation	(*)	(*)	(*)	(*)
Pesticides	(*)	(*)	(*)	(*)
Petroleum Refining	(*)	(*)	(*)	(*)
Pharmaceutical Preparations	(*)	(*)	(*)	(*)
Photographic Equipment and Supplies	(*)	(*)	(*)	(*)
Plastic and Synthetic Materials Manufacturing	(*)	(*)	(*)	(*)
Plastic Processing	(*)	...	...	...
Porcelain Enameling	(*)	...	(*)	(*)
Printing and Publishing	(*)	(*)	(*)	(*)
Pulp and Paper Mills	(*)	(*)	(*)	(*)
Rubber Processing	(*)	(*)	(*)	...
Soap and Detergent Manufacturing	(*)	(*)	(*)	...
Steam Electric Power Plant	(*)	(*)	(*)	...
Textile Mills	(*)	(*)	(*)	(*)
Timber Products Processing	(*)	(*)	(*)	(*)

(1) The toxic pollutants in each fraction are listed in Table II.  
\* Testing required.

TABLE II  
Organic Toxic Pollutants in Each of Four Fractions in Analysis  
by Gas Chromatography/Mass Spectroscopy (GC/MS)

(a) VOLATILES

1V	acrolein
2V	acrylonitrile
3V	benzene
4V	bis (chloromethyl) ether
5V	bromoform
6V	carbon tetrachloride
7V	chlorobenzene
8V	chlorodibromomethane
9V	chloroethane
10V	2-chloroethylvinyl ether
11V	chloroform
12V	dichlorobromomethane
13V	dichlorodifluoromethane
14V	1,1-dichloroethane
15V	1,2-dichloroethane
16V	1,1-dichloroethylene

17V	1,2-dichloropropane
18V	1,2-dichloropropylene
19V	ethylbenzene
20V	methyl bromide
21V	methyl chloride
22V	methoylene chloride
23V	1,1,2,2-tetrachloroethane
24V	tetrachloroethylene
25V	toluene
26V	1,2-trans-dichloroethylene
27V	1,1,1-trichloroethane
28V	1,1,2-trichloroethane
29V	trichloroethylene
30V	trichlorofluoromethane
31V	vinyl chloride

(b) ACID COMPOUNDS

1A	2-chlorophenol
2A	2,4-dichlorophenol
3A	2,4-dimethylphenol
4A	4,6-dinitro-o-cresol
5A	2,4-dinitrophenol
6A	2-nitrophenol
7A	4-nitrophenol
8A	p-chloro-m-cresol
9A	pentachlorophenol
10A	phenol
11A	2,4,6-trichlorophenol

(c) BASE/NEUTRAL

1B	acenaphthene
2B	acenaphthylene
3B	anthracene
4B	benzidine
5B	benzo(a)anthracene
6B	benzo(a)pyrene
7B	3,4-benzofluoranthene
8B	benzo(ghi)perylene
9B	benzo(k)fluoranthene
10B	bis(2-chloroethoxy)methane
11B	bis(2-chloroethyl)ether
12B	bis(2-chloroethyl)ether
13B	bis(2-ethylhexyl)phthalate
14B	4-bromophenyl phenyl ether
15B	butylbenzyl phthalate
16B	2-chloronaphthanlene
17B	4-chlorophenyl phenyl ether
18B	chrysene
19B	dibenxo(a,h)anthracene
20B	1,2-dichlorobenzen
21B	1,3-dichlorobenzene
22B	1,4-dichlorobenzene

23B	3,3-dichlorobenzidine
24B	diethyl phthalate
25B	dimethyl phtahalate
26B	di-n-butyl phthalate
27B	2,4-dinitrotoluene
28B	2,6-dinitrotoluene
29B	di-n-octyl phthalate
30B	1,2-diphenylhydrazine (as azobenzene)
31B	fluoranthene
32B	fluorene
33B	hexachlorobenzene
34B	hexachlorobutadiene
35B	hexachlorocyclopentadiene
36B	hexachloroethane
37B	indeno(1,2,3-cd)pyrene
38B	isophorone
39B	naphthalene
40B	nitrobenzene
41B	N-nitrosodimethylamine
42B	N-nitrosodi-n-propylamine
43B	N-nitrosodiphenylamine
44B	phenanthrene
45B	pyrene
46B	1,2,4-trichlorobenzene

(d) PESTICIDES

1P	aldrin
2P	alpha-BHC
3P	beta-BHC
4P	gamma-BHC
5P	delta-BHC
6P	chlordane
7P	4,4'-DDT
8P	4,4'-DDE
10P	dieldrin
11P	alpha-endosulfan
12P	beta-endosulfan
13P	endosulfan sulfate
14P	endrin
15P	endrin aldehyde
16P	heptachlor
17P	heptachlor epoxide
18P	PCB-1242
19P	PCB-1254
20P	PCB-1221
21P	PCB-1232
22P	PCB-1248
23P	PCB-1260
24P	PCB-1016
25P	toxaphene

TABLE III

Other Toxic Pollutants; Metals, Cyanide, and Total Phenols

- (a) Antimony, Total
- (b) Arsenic, Total
- (c) Beryllium, total
- (d) Cadmium, Total
- (e) Chromium, Total
- (f) Copper, Total
- (g) Lead, Total
- (h) Mercury, Total
- (i) Nickel, Total
- (j) Selenium, Total
- (k) Silver, Total
- (l) Thallium, Total
- (m) Zinc, Total
- (n) Cyanide, Total
- (o) Phenols, Total

TABLE IV

Conventional and Nonconventional Pollutants Required to be Tested  
by Existing Dischargers if Expected to be Present

- (a) Bromide
- (b) Chlorine, Total Residual
- (c) Color
- (d) Fecal Coliform
- (e) Fluoride
- (f) Nitrate-Nitrite
- (g) Nitrogen, total Organic
- (h) Oil and Grease
- (i) Phosphorus, Total
- (j) Radioactivity
- (k) Sulfate
- (l) Sulfide
- (m) Sulfite
- (n) Surfactants
- (o) Aluminum, Total
- (p) Barium, Total
- (q) Boron, Total
- (r) Cobalt, Total
- (s) Iron, Total
- (t) Magnesium, Total
- (u) Molybdenum, Total
- (v) Manganese, Total
- (w) Tin, Total
- (x) Titanium, Total

TABLE V

28 Toxic Pollutants and Hazardous Substances Required  
to be Identified by Existing Dischargers  
if Expected to be Present

- (a) Toxic Pollutants - Asbestos
- (b) Hazardous Substances

1. Acetaldehyde
2. Allyl alcohol
3. Allyl chloride
4. Amyl acetate
5. Aniline
6. Benzonitrile
7. Benzyl chloride
8. Butyl acetate
9. Butylamine
10. Captan
11. Carbaryl
12. Carbofuran
13. Carbon disulfide
14. Chlorpyrifos
15. Coumaphos
16. Cresol
17. Crotonaldehyde
18. Cyclohexane
19. 2,4-D(2,4-Dichlorophenoxy acetic acid)
20. Diazinon
21. Dicamba
22. Dichlobenil
23. Dichlone
24. 2,2-Dichloropropionic acid
25. Dichlorvos
26. Diethyl amine
27. Dimethyl amine
28. Dinitrobenzene
29. Diquat
30. Disulfoton
31. Diuron
32. Epichloropydrin
33. Ethanolamine
34. Ethion
35. Ethylene diamine
36. Ethylene dibromide
37. Formaldehyde
38. Furfural
39. Guthion
40. Isoprene
41. Isopropanolamine dodecylbenzenesulfonate
42. Kelthane
43. Kepone
44. Malathion
45. Mercaptodimethur
46. Methoxychlor
47. Methyl mercaptan
48. Methyl methacrylate
49. Methyl parathion
50. Mevinphos
51. Mexacarbate

52. Monoethyl amine
53. Monomethyl amine
54. Naled
55. Npathenic acid
56. Nitrotouene
57. Parathion
58. Phenolsulfanante
59. Phosgene
60. Propargite
61. Propylene oxide
62. Pyrethrins
63. Quinoline
64. Resorconol
65. Strontium
66. Strychnine
67. Styrene
68. 2,4,5-T(2,4,5-Trichlorophenoxy acetic acid)
69. TDE(Tetrachlorodiphenylethane)
70. 2,4,5-TP (2-(2,4,5 - trichlorophenoxy)propanic acid)
71. Trichlorofan
72. Triethanolamine dodecylbenzenesulfonate
73. Triethylamine
74. Trimethylamine
75. Uranium
76. Vanadium
77. Vinyl Acetate
78. Xylene
79. Xylenol
80. Zirconium

3.14 APPLICATION REQUIREMENTS OF R317-8-3.8(7)(E) SUSPENDED FOR CERTAIN CATEGORIES AND SUBCATEGORIES OF PRIMARY INDUSTRIES. The application requirements of R317-8-3.5 (7)(c) are suspended for the following categories and subcategories of the primary industries listed in R317-8-3.11:

- (1) Coal mines.
- (2) Testing and reporting for all four organic fractions in the Greige Mills subcategory of the Textile Mills Industry and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.
- (3) Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry, and testing and reporting for all four fractions in all other subcategories of this industrial category.
- (4) Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.
- (5) Testing and reporting for the pesticide fraction in the Tall Oil Resin Subcategory and Rosin-Based Derivatives Subcategory of the Gum and Wood Chemicals industry and testing and reporting for the pesticide and base/neutral fractions in all other subcategories of this industrial category.
- (6) Testing and reporting for the pesticide fraction in the Leather Tanning and Finishing, Paint and Ink Formulation, and Photographic Supplies industrial categories.

(7) Testing and reporting for the acid, base/neutral and pesticide fractions in the Petroleum Refining industrial category.

(8) Testing and reporting for the pesticide fraction in the Papergrade Sulfite subcategories of the Pulp and Paper industry; testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink Dissolving Kraft and Paperboard from Waste Paper; testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft, Semi-Chemical and Nonintegrated Fine Papers; and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft, Dissolving, Sulfite Pulp, Groundwood-Fine Papers, Market Bleached Kraft, Tissue from Wastepaper, and Nonintegrated-Tissue Papers.

(9) Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.

#### **R317-8-4. PERMIT CONDITIONS.**

4.1 CONDITIONS APPLICABLE TO ALL UPDES PERMITS. The following conditions apply to all UPDES permits. Additional conditions applicable to UPDES permits are in R317-8-4.1(15). All conditions applicable shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit. In addition to conditions required in all UPDES permits, the Executive Secretary will establish conditions as required on a case-by-case basis under R317-8-4.2 and R317-8-5.

(1) Duty to Comply.

(a) General requirement. The permittee must comply with all conditions of the UPDES permit. Any permit noncompliance is a violation of the Utah Water Quality Act, as amended and is grounds for enforcement action; permit termination, revocation and reissuance or modification; or denial of a permit renewal application.

(b) Specific duties.

1. The permittee shall comply with effluent standards or prohibitions for toxic pollutants and with standards for sewage sludge use or disposal established by the State within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement (40 CFR, 129).

2. The Utah Water Quality Act, in 19-5-115, provides that any person who violates the Act, or any permit, rule, or order adopted under it is subject to a civil penalty not to exceed \$10,000 per day of such violation. Any person who willfully or with gross negligence violates the Act, or any permit, rule or order adopted under it is subject to a fine of not more than \$25,000 per day of violation. Any person convicted under 19-5-115 a second time shall be punished by a fine not exceeding \$50,000 per day.

(2) Duty to Reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of the permit, the permittee shall apply for and obtain a new permit as required in R317-8-3.1.

(3) Need to Halt or Reduce Activity Not a Defense. It shall not

be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. (Upon reduction, loss, or failure of the treatment facility, the permittee, to the extent necessary to maintain compliance with the permit, shall control production of all discharges until the facility is restored or an alternative method of treatment is provided.)

(4) Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of the UPDES permit which has a reasonable likelihood of adversely affecting human health or the environment.

(5) Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

(6) Permit Actions. The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(7) Property Rights. This permit does not convey any property rights of any kind, or any exclusive privilege.

(8) Duty to Provide Information. The permittee shall furnish to the Executive Secretary, within a reasonable time, any information which the Executive Secretary may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with this permit. The permittee shall also furnish to the Executive Secretary, upon request, copies of records required to be kept by the permit.

(9) Inspection and Entry. The permittee shall allow the Executive Secretary, or an authorized representative, including an authorized contractor acting as a representative of the Executive Secretary) upon the presentation of credentials and other documents as may be required by law to:

(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment, including monitoring and control equipment, practices or operations regulated or required under the permit; and

(d) Sample or monitor at reasonable times for the purposes of assuring UPDES program compliance or as otherwise authorized by the Utah Water Quality Act any substances or parameters, or practices at any location.

(10) Monitoring and records.

(a) Samples and measurements taken for the purpose of monitoring



shall be representative of the monitored activity.

(b) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Executive Secretary at any time. Records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, shall be retained for a period of at least five years or longer as required by State promulgated standards for sewage sludge use and disposal.

(c) Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The individual(s) who performed the sampling or measurements;
3. The date(s) and times analyses were performed;
4. The individual(s) who performed the analyses;
5. The analytical techniques or methods used; and
6. The results of such analyses.

(d) Monitoring shall be conducted according to test procedures approved under 40 CFR 136 or in the case of sludge use or disposal, approved under 40 CFR 136 unless otherwise specified in State standards for sludge use or disposal, unless other test procedures, approved by EPA under 40 CFR 136, have been specified in the permit.

(e) Section 19-5-115(3) of the Utah Water Quality Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the permit shall, upon conviction, be punished by a fine not exceeding \$10,000 or imprisonment for not more than six months or by both.

(11) Signatory Requirement. All applications, reports, or information submitted to the Executive Secretary shall be signed and certified as indicated in R317-8-3.4. The Utah Water Quality Act provides that any person who knowingly makes any false statements, representations, or certifications in any record or other document submitted or required to be maintained under the permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months or by both.

(12) Reporting Requirements.

(a) Planned changes. The permittee shall give notice to the Executive Secretary as soon as possible of any planned physical alteration or additions to the permitted facility. Notice is required only when:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in R317-8-8; or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit nor to notification requirements under R317-8-4.1(15).

3. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that

are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

(b) Anticipated Noncompliance. The permittee shall give advance notice to the Executive Secretary of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(c) Transfers. The permit is not transferable to any person except after notice to the Executive Secretary. The Executive Secretary may require modification on and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Utah Water Quality Act, as amended. (In some cases, modification, revocation and reissuance is mandatory.)

(d) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in the permit. Monitoring results shall be reported as follows:

1. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Executive Secretary for reporting results of monitoring of sludge use or disposal practices.

2. If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR 136 or the in the case of sludge use or disposal, approved under 40 CFR 136 unless otherwise specified in State standards for sludge use and disposal, or as specified in the permit according to procedures approved by EPA, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Executive Secretary.

3. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

(e) Compliance Schedules. Reports of compliance or noncompliance with, or any progress report on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than fourteen days following each scheduled date.

(f) Twenty-Four Hour Reporting. The permittee shall (orally) report any noncompliance which may endanger health or the environment. Any information shall be provided orally within twenty-four hours from the time the permittee becomes aware of the circumstances. (The report shall be in addition to and not in lieu of any other reporting requirement applicable to the noncompliance.) A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. (The Executive Secretary may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.) The following shall be included as events which must be reported within twenty-four hours:

1. Any unanticipated bypass which exceeds any effluent limitation in the permit, as indicated in R317-8-4.1(13).

2. Any upset which exceeds any effluent limitation in the permit.

3. Violation of a maximum daily discharge limitation for any of the pollutants listed by the Executive Secretary in the permit to be reported within twenty-four hours, as indicated in R317-8-4.2(7). The Executive Secretary may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(g) Other NonCompliance. The permittee shall report all instances of noncompliance not reported under R317-8-4.1(12) (d), (e), and (f) at the time monitoring reports are submitted. The reports shall contain the information listed in R317-8-4.1(12)(f).

(h) Other Information. Where the permittee becomes aware that it failed to submit any relevant fact in a permit application, or submitted incorrect information in its permit application or in any report to the Executive Secretary, it shall promptly submit such facts or information.

(13) Occurrence of a Bypass.

(a) Definitions.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) Bypass Not Exceeding Limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to R317-8-4.1(13)(c) 1 and 2 or R317-8-4.1(13)(d).

(c) Notice.

1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of bypass.

2. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in R317-8-4.1(12)(f).

(d) Prohibition of Bypass.

1. Bypass is prohibited, and the Executive Secretary may take enforcement action against a permittee for bypass, unless:

a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance, and

c. The permittee submitted notices as required under R317-8-4.1(13)(c).

2. The Executive Secretary may approve an anticipated bypass, after considering its adverse effects, if the Executive Secretary determines that it will meet the three conditions listed in R317-8-4.1(13)(d) a, b, and c.

(14) Occurrence of an Upset.

(a) Definition. "Upset" means an exceptional incident in which

there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effect of an Upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of R317-8-4.1(14)(c) are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, if final administrative action subject to judicial review.

(c) Conditions Necessary for a Demonstration of Upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and that the permittee can identify the specific cause(s) of the upset;

2. The permitted facility was at the time being properly operated; and

3. The permittee submitted notice of the upset as required in R317-8-4.1(12)(f) (twenty-four hour notice).

4. The permittee complied with any remedial measures required under R317-8-4.1(4).

(d) Burden of Proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

(15) Additional Conditions Applicable to Specified Categories of UPDES Permits. The following conditions, in addition to others set forth in these regulations apply to all UPDES permits within the categories specified below:

(a) Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers. In addition to the reporting requirements under R317-8-4.1(12),(13), and (14), any existing manufacturing, commercial, mining, and silvicultural discharger shall notify the Executive Secretary as soon as it knows or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

- a. One hundred micrograms per liter (100 ug/l);

- b. Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4 dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

- c. Five times the maximum concentration value reported for that pollutant in the permit application in accordance with R317-8-3.5(7) or (10).

- d. The level established by the Executive Secretary in accordance with R317-8-4.2(6).

2. That any activity has occurred or will occur which would result in any discharge on a non-routine or infrequent basis of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

- a. Five hundred micrograms per liter (500 ug/l).

- b. One milligram per liter (1 mg/l) for antimony.
- c. Ten times the maximum concentration value reported for that pollutant in the permit application in accordance with R317-8-3.5(9).
- d. The level established by the Executive Secretary in accordance with R317-8-4.2(6).

(b) POTWs. POTWs shall provide adequate notice to the Executive Secretary of the following:

1. Any new introduction of pollutants into that POTW from an indirect discharger which would be subject to the UPDES regulations if it were directly discharging those pollutants; and

2. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

3. For purposes of this paragraph, adequate notice shall include information on the quality and quantity of effluent introduced into the POTW; and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

(c) Municipal separate storm sewer systems. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been determined by the Executive Secretary under R317-8-3.9(1)(a)5 of this part must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include:

1. The status of implementing the components of the storm water management program that are established as permit conditions;

2. Proposed changes to the storm water management programs that are established as permit conditions. Such proposed changes shall be consistent with R317-8-3.9(3)(b)3; and

3. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under R317-8-3.9(3)(b)4 and 3.9(3)(b)5;

4. A summary of data, including monitoring data, that is accumulated throughout the reporting year;

5. Annual expenditures and budget for year following each annual report;

6. A summary describing the number and nature of enforcement actions, inspections, and public education programs;

7. Identification of water quality improvements or degradation.

4.2 ESTABLISHING PERMIT CONDITIONS. For the purposes of this section, permit conditions include any statutory or regulatory requirement which takes effect prior to the final administrative disposition of a permit. An applicable requirement may be any requirement which takes effect prior to the modification or revocation or reissuance of a permit, to the extent allowed in R317-8-5.6. New or reissued permits, and to the extent allowed under R317-8-5.6, modified or revoked and reissued permits shall incorporate each of the applicable requirements referenced in this section. In addition to the conditions established under R317-8-4.1 each UPDES permit will include conditions on a case by case basis to provide for and ensure compliance with all applicable Utah statutory and regulatory requirements and the following, as applicable:

(1) Technology-based effluent limitations and standards, based on effluent limitations and standards promulgated under Section 19-5-104 of the Utah Water Quality Act or new source performance standards

promulgated under Section 19-5-104 of the Utah Water Quality Act, on case-by-case effluent limitations, or a combination of the two in accordance with R317-8-7.1.

(2) Toxic Effluent Standards and Other Effluent Limitations. If any applicable toxic effluent standard or prohibition, including any schedule of compliance specified in such effluent standard or prohibition, is promulgated under Section 307(a) of CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Executive Secretary shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

(3) Reopener Clause. For any discharger within a primary industry category, as listed in R317-8-3.11, requirements will be incorporated as follows:

(a) On or before June 30, 1981:

1. If applicable standards or limitations have not yet been promulgated, the permit shall include a condition stating that, if an applicable standard or limitation is promulgated and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

2. If applicable standards or limitations have been promulgated or approved, the permit shall include those standards or limitations.

(b) On or after the statutory deadline set forth in Section 301(b)(2) (A), (C), and (E) of CWA, any permit issued shall include effluent limitations to meet the requirements of Section 301(b)(2) (A), (C), (D), (E), (F), whether or not applicable effluent limitations guidelines have been promulgated or approved. These permits need not incorporate the clause required by R317-8-4.2(3)(a)1.

(c) The Executive Secretary shall promptly modify or revoke and reissue any permit containing the clause required under R317-8-4.2(3)(a)1 to incorporate an applicable effluent standard or limitation which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

(d) For any permit issued to a treatment works treating domestic sewage (including sludge-only facilities), the Executive Secretary shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal adopted by the State. The Executive Secretary may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

(4) Water quality standards and state requirements shall be included as applicable. Any requirements in addition to or more stringent than EPA's effluent limitation guidelines or standards will be included, when necessary to:

(a) Achieve water quality standards established under the Utah Water Quality Act, as amended and regulations promulgated pursuant thereto, including State narrative criteria for water quality.

1. Permit limitations must control all pollutants or pollutant

parameters (either conventional, nonconventional, or toxic pollutants) which the Executive Secretary determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.

2. When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the Executive Secretary shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

3. When the Executive Secretary determines, using the procedures in R317-8-4.2(4)(2), that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a State numeric criteria within a State water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

4. When the Executive Secretary determines, using the procedures in R317-8-4.2(4)(2), that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit will contain effluent limits for whole effluent toxicity.

5. Except as provided in R317-8-4.2, when the Executive Secretary determines, using the procedures in R317-8-4.2(4)(2), toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable State water quality standard, the permit will contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the Executive Secretary determines in the fact sheet or statement of basis of the UPDES permit, using the procedures in R317-8-4.2(4)(2), that chemical specific limits for effluent are sufficient to attain and maintain applicable numeric and narrative State water quality standards.

6. Where the State has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable State water quality standard the Executive Secretary will establish effluent limits using one or more of the following options:

a. Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the Executive Secretary determines will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed State criterion, or an explicit State policy or regulation interpreting its narrative water quality criteria supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, October 1983, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents:

b. Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under section 307(a) of the CWA,

supplemented where necessary by other relevant information; or

c. Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(i) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitations;

(ii) The fact sheet as required by .4 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(iii) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(iv) The permit contains a reopener clause allowing the Executive Secretary to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

7. When developing water quality-based effluent limits under this paragraph the Executive Secretary shall ensure that:

a. The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards; and

b. Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7.

(b) Attain or maintain a specified water quality through water quality related effluent limits established under the Utah Water Quality Act;

(c) Conform to applicable water quality requirements when the discharge affects a state other than Utah;

(d) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under federal or state law or regulations.

(e) Ensure consistency with the requirements of any Utah Water Quality Management Plan approved by EPA.

(f) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under R317-8-7.3.

(5) Technology-based Controls for Toxic Pollutants. Limitations established under R317-8-4.2 (1), (2), or (4) to control pollutants meeting the criteria listed in R317-8-4.2(5)(a) will be included in the permit, if applicable. Limitations will be established in accordance with R317-8-4.2(5)(6). An explanation of the development of these limitations will be included in the fact sheet under R317-8-6.4.

(a) Limitations will control all toxic pollutants which:

1. The Executive Secretary determines, based on information reported in a permit application under R317-8-3.5(7) and (10), or in a notification under R317-8-4.1(15)(a) of this regulation or on other information, are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under R317-8-7.1(3)(a),(b) and (c).

2. The discharger does or may use or manufacture as an intermediate



or final product or byproduct.

(b) The requirement that the limitations control the pollutants meeting the criteria of paragraph (a) of this subsection will be satisfied by:

1. Limitations on those pollutants; or
2. Limitations on other pollutants which, in the judgment of the Executive Secretary, will provide treatment of the pollutants under paragraph (a) of this subsection to the levels required by R317-8-7.1(3)(a), (b) and (c).

(6) Notification Level. A "notification level" which exceeds the notification level of R317-8-4.1(15) upon a petition from the permittee or on the Executive Secretary's initiative will be incorporated as a permit condition, if applicable. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under R317-8-7.1(3).

(7) Twenty-Four (24) Hour Reporting. Pollutants for which the permittee will report violations of maximum daily discharge limitations under R317-8-4.1(12)(f) shall be listed in the permit. This list will include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(8) Monitoring Requirements. The permit will incorporate, as applicable in addition to R317-8-4.1(12) the following monitoring requirements:

(a) To assure compliance with permit limitations, requirements to monitor;

1. The mass, or other measurement specified in the permit, for each pollutant limited in the permit;

2. The volume of effluent discharged from each outfall;

3. Other measurements as appropriate, including pollutants in internal waste streams under R317-8-4.3(8); pollutants in intake water for net limitations under R317-8-4.3(7); frequency and rate of discharge for noncontinuous discharges under R317-8-4.3(5); pollutants subject to notification requirements under R317-8-4.1(15)(a); and pollutants in sewage sludge or other monitoring as specified in State rules for sludge use or disposal or as determined to be necessary pursuant to R317-8-2.1.

4. According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under the federal regulation, and according to a test procedure specified in the permit for pollutants with no approved methods.

(b) Except as provided in paragraphs (8)(d) and (8)(e) of this section, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in R317-8-1.10(9) (where applicable), but in no case less than once a year.

(c) Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

(d) Requirements to report monitoring results for storm water discharges associated with industrial activity (other than those addressed in paragraph (c) above) shall be established on a case-by-case

basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require;

1. The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

2. The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of non-compliance;

3. Such report and certification be signed in accordance with R317-8-3.4; and

4. Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or alternative requirements.

(e) Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under R317-8-4.1(12)(a),(d),(e), and (f) at least annually.

(9) Pretreatment Program for POTWs. If applicable to the facility the permit will incorporate as a permit condition, requirements for POTWs to:

- (a) Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under the UPDES regulations.

- (b) Submit a local program when required by and in accordance with R317-8-8.10 to assure compliance with pretreatment standards to the extent applicable in the UPDES regulations. The local program will be incorporated into the permit as described in R317-8-8.10. The program shall require all indirect dischargers to the POTW to comply with the applicable reporting requirements.

- (c) For POTWs which are "sludge-only facilities", a requirement to develop a pretreatment program under R317-8-8 when the Executive Secretary determines that a pretreatment program is necessary to assure compliance with State rules governing sludge use or disposal.

(10) Best management practices shall be included as a permit condition, as applicable, to control or abate the discharge of pollutants when:

- (a) Authorized under the Utah Water Quality Act as amended and the UPDES rule for the control of toxic pollutants and hazardous substances from ancillary activities;

- (b) Numeric effluent limitations are infeasible, or

- (c) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Utah Water Quality Act, as amended.

(11) Reissued Permits.

- (a) Except as provided in R317-8-4.2(11)(b), when a permit is renewed or reissued, interim limitations, standards or conditions must be at least as stringent as the final limitations, standards, or conditions in the previous permit unless the circumstances on which the

previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under R317-8-5.6.

(b) In the case of effluent limitations established on the basis of Section 19-5-104 of the Utah Water Quality Act, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated by EPA under section 304(b) of the CWA subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

(c) Exceptions--A permit with respect to which R317-8-4.2(11)(b) applies may be renewed, reissued or modified to contain a less stringent effluent limitation applicable to a pollutant, if--

1. Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation; and

2. a. Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

- b. The Executive Secretary determines that technical mistakes or mistaken interpretations of law were made in issuing the permit;

3. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

4. The permittee has received a permit modification under R317-8-5.6; or

5. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

(d). Limitations. In no event may a permit with respect to which R317-8-4.2(11)(b) applies be renewed, reissued or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of the water quality standard applicable to such waters.

(12) Privately Owned Treatment Works. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this regulation will be imposed as applicable. Alternatively, the Executive Secretary may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The Executive Secretary's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits or to require separate applications, and the basis for that decision will be stated in the fact sheet for the draft permit

for the treatment works.

(13) Grants. Any conditions imposed in grants or loans made by the Executive Secretary to POTWs which are reasonably necessary for the achievement of federally issued effluent limitations will be required as applicable.

(14) Sewage Sludge. Requirements governing the disposal of sewage sludge from publicly owned treatment works or any other treatment works treating domestic sewage for any use for which rules have been established, in accordance with any applicable regulations.

(15) Coast Guard. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, the permit will be conditioned to require that the discharge comply with any applicable federal regulation promulgated by the Secretary of the department in which the Coast Guard is operating, and such condition will establish specifications for safe transportation, handling, carriage, and storage of pollutants, if applicable.

(16) Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with R317-8-6.9 will be included.

(17) State standards for sewage sludge use or disposal. When there are no applicable standards for sewage sludge use or disposal, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. If any applicable standard for sewage sludge use or disposal is promulgated under Section 19-5-104 of the Utah Water Quality Act, and that standard is more stringent than any limitation on the pollutant or practice in the permit, the Executive Secretary may initiate proceedings under these rules to modify or revoke and reissue the permit to conform to the standard for sewage sludge use or disposal.

R317-8-4.2

(18) Qualifying State or local programs.

(a) For storm water discharges associated with small construction activity identified in R317-8-3.9(6)(e), the Executive Secretary may include permit conditions that incorporate qualifying State or local erosion and sediment control program requirements by reference. Where a qualifying State or local program does not include one or more of the elements in this paragraph then the Executive Secretary must include those elements as conditions in the permit. A qualifying State or local erosion and sediment control program is one that includes:

1. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

2. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

3. Requirements for construction site operators to develop and implement a storm water pollution prevention plan. (A storm water pollution prevention plan includes site descriptions of appropriate control measures, copies of approved State, local requirements, maintenance procedures, inspections procedures, and identification of non-storm water discharges); and

4. Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

(b) For storm water discharges from construction activity identified in R317-8-3.9(6)(d)10., the Executive Secretary may include permit conditions that incorporate qualifying State or local erosion and sediment control program requirements by reference. A qualifying State or local erosion and sediment control program is one that includes the elements listed in paragraph (18)(a) of this section and any additional requirements necessary to achieve the applicable technology-based standards of "best available technology" and "best conventional technology" based on the best professional judgement of the permit writer.

4.3 CALCULATING UPDES PERMIT CONDITIONS. The following provisions will be used to calculate terms and conditions of the UPDES permit.

(1) Outfalls and Discharge Points. All permit effluent limitations, standards, and prohibitions will be established for each outfall or discharge point of the permitted facility, except as otherwise provided under R317-8-4.2(10) with BMPs where limitations are infeasible; and under R317-8-4.3(8), limitations on internal waste streams.

(2) Production-Based Limitations.

(a) In the case of POTWs, permit effluent limitations, standards, or prohibitions will be calculated based on design flow.

(b) Except in the case of POTWs, calculation of any permit limitations, standards, or prohibitions which are based on production, or other measure of operation, will be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production will correspond to the time period of the calculated permit limitations; for example, monthly production will be used to calculate average monthly discharge limitations. The Executive Secretary may include a condition establishing alternate permit standards or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

(c) For the automotive manufacturing industry only, the Executive Secretary may establish a condition under R317-8-4.3(2)(b)2 if the applicant satisfactorily demonstrates to the Executive Secretary at the time the application is submitted that its actual production, as indicated in R317-8-4.3(2)(b)1, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

(d) If the Executive Secretary establishes permit conditions under and R317-8-4.3(2)(c):

1. The permit shall require the permittee to notify the Executive Secretary at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice.

2. The permittee shall comply with the limitations, standards, or

prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the Executive Secretary under R317-8-4.3(2)(d)1, in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice.

3. The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

(3) Metals. All permit effluent limitations, standards, or prohibitions for a metal will be expressed in terms of the total recoverable metal, that is, the sum of the dissolved and suspended fractions of the metal, unless:

(a) An applicable effluent standard or limitation has been promulgated by EPA and specifies the limitation for the metal in the dissolved or valent form; or total form; or

(b) In establishing permit limitations on a case-by-case basis under R317-8-7, it is necessary to express the limitation on the metal in the dissolved or valent form in order to carry out the provisions of the Utah Water Quality Act; or

(c) All approved analytical methods for the metal inherently measure only its dissolved form.

(4) Continuous Discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, unless impracticable will be stated as:

(a) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

(b) Average weekly and average monthly discharge limitations for POTWs.

(5) Non-continuous Discharges. Discharges which are not continuous, as defined in R317-8-1.5(7), shall be particularly described and limited, considering the following factors, as appropriate:

(a) Frequency; for example, a batch discharge shall not occur more than once every three (3) weeks;

(b) Total mass; for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge;

(c) Maximum rate of discharge of pollutants during the discharge for example, not to exceed 2 kilograms of zinc per minute; and

(d) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure, (for example, shall not contain at any time more than 0.05 mg/l zinc or more than 250 grams (0.25 kilogram) of zinc in any discharge).

(6) Mass Limitations.

(a) All pollutants limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except:

1. For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

2. When applicable standards and limitations are expressed in terms of other units of measurement; or

3. If, in establishing permit limitations on a case-by-case basis under R317-8-7.1, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation; (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used

as a substitute for treatment.

(b) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit will require the permittee to comply with both limitations.

(7) Pollutants in Intake Water.

(a) Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:

1. The applicable effluent limitations and standards contained in effluent guidelines and standards provide that they shall be applied on a net basis; or

2. The discharger demonstrates that the control system it proposes or used to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.

(b) Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(c) Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

(d) Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The Executive Secretary may waive this requirement if he finds that no environmental degradation will result.

(e) This section does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

(8) Internal Waste Streams.

(a) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by R317-8-4.2(8) shall also be applied to the internal waste streams.

(b) Limits on internal waste streams will be imposed only when the fact sheet under R317-8-6.4 sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible, for example, under 10 meters of water, the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

(9) Disposal of Pollutants Into Wells, Into POTWs, or by Land Application. Permit limitations and standards shall be calculated as provided in R317-8-2.6.

(10) Secondary Treatment Information. Permit conditions that involve secondary treatment will be written as provided in 40 CFR Part 133, except that Utah effluent limits for secondary treatment will be used.

#### 4.4 STAYS OF CONTESTED PERMIT CONDITIONS.

(1) Stays

(a) If a request to the Executive Director for review of a UPDES permit is granted or if conditions of a RCRA or UIC permit are consolidated for reconsideration in a hearing on a UPDES permit, the effect of the contested permit conditions shall be stayed and shall not be subject to judicial review pending final action by the Executive Director. If the permit involves a new source, new discharger or a recommencing discharger, the applicant shall be without a permit for the proposed new facility, source or discharger pending final action by the Executive Director.

(b) Uncontested conditions which are not severable from those contested shall be stayed together with the contested conditions. Stayed provisions of permits for existing facilities and sources shall be identified by the Executive Director. All other provisions of the permit for the existing facility or source shall remain fully effective and enforceable.

(2) Stays based on cross effects. A stay may be granted based on the grounds that an appeal to the Executive Director of one permit may result in changes to another state-issued permit only when each of the permits involved has been appealed to the Executive Director and he or she has accepted each appeal.

#### **R317-8-5. PERMIT PROVISIONS.**

##### **5.1 DURATION OF PERMITS**

(1) UPDES permits shall be effective for a fixed term not to exceed 5 years.

(2) Except as provided in R317-8-3.1(4) (d), the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(3) The Executive Secretary may issue any permit for a duration that is less than the full allowable term under this section.

(4) A permit that would expire on or after the Federal statutory deadline set forth in section 301(b)(2) (A), (C), and (E) of the CWA, may be issued to expire after the deadline if the permit includes effluent limitations to meet the requirements of section 301(b)(2) (A), (C), (D), (E) and (F), whether or not applicable effluent limitations guidelines have been promulgated or approved.

(5) A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under paragraph (d) of this section is not conclusive as to the discharger's inclusion in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated.

##### **5.2 SCHEDULES OF COMPLIANCE**

(1) The permit may, when appropriate, specify a schedule of compliance leading to compliance with the Utah Water Quality Act, as amended, and regulations promulgated pursuant thereto.

(a) Time for compliance. Any schedules of compliance under this section will require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA.

(b) The first UPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements



issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For recommencing discharges, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

(c) Interim dates. Except as provided in R317-8-5.2(2)(a)2 if a permit establishes a schedule of compliance which exceeds one (1) year from the date of permit issuance, the schedule will set forth interim requirements and the dates for their achievement.

1. The time between interim dates will not exceed one (1) year, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates will not exceed six months.

2. If the time necessary for completion of any interim requirement, such as the construction of a control facility, is more than one (1) year and is not readily divisible into stages for completion, the permit will specify interim dates, (but not more than one interim date per calendar year per project phase or segment), for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(d) Reporting. The permit shall be written to require that no later than fourteen (14) days following each interim date and the final date of compliance, the permittee shall notify the Executive Secretary in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports.

(2) Alternative Schedules of Compliance. A UPDES permit applicant or permittee may cease conducting regulated activities (by termination of direct discharge for UPDES sources), rather than continue to operate and meet permit requirements as follows:

(a) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

1. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

2. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(b) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit will contain a schedule leading to termination which will ensure timely compliance with applicable requirements no later than the statutory deadline.

(c) If the permittee is undecided whether to cease conducting regulated activities, the Executive Secretary may issue or modify a permit to contain two schedules as follows:

1. Both schedules will contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

2. One schedule shall lead to timely compliance no later than the statutory deadline in the CWA;

3. The second schedule will lead to cessation of regulated

activities by a date which will ensure timely compliance with the applicable requirements no later than the deadline specified in R317-8-7;

4. Each permit containing two schedules will include a requirement that after the permittee has made a final decision under R317-8-5.2(2)(c), it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(d) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Executive Secretary, such as a resolution of the Board of Directors of a corporation.

5.3 REQUIREMENTS FOR RECORDING AND REPORTING OF MONITORING RESULTS. All permits shall specify:

(1) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, (including biological monitoring methods when appropriate);

(2) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(3) Applicable reporting requirements based upon the impact of the regulated activity and as specified in R317-8-4.1 and 4.2. Reporting shall be no less frequent than specified in the above section.

#### 5.4 EFFECT OF A PERMIT

(1) Except for any toxic effluent standards and prohibitions included in R317-8-4.1(1)(b) and any standards adopted by the State for sewage sludge use or disposal, compliance with a UPDES permit during its term constitutes compliance, for purposes of enforcement, with the UPDES program. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in R317-8-5.6 and 5.7.

(2) The issuance of a permit does not convey any property rights or any exclusive privilege.

(3) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

(4) Compliance with a permit condition which implements a particular standard for sewage sludge use or disposal shall be an affirmative defense in any enforcement action brought for a violation of that standard for sewage use or disposal under the UPDES program.

#### 5.5 TRANSFER OF PERMITS

(1) Transfers by Modification. Except as provided in R317-8-5.5(2) a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, under R317-8-5.6 or if a minor modification has been made to identify the new permittee and incorporate such other requirements as may be necessary under the UPDES regulations.

(2) Automatic Transfers. As an alternative to transfers under subsection (1) of this section, any UPDES permit may be automatically transferred to a new permittee if:

(a) The current permittee notifies the Executive Secretary at least thirty (30) days in advance of the proposed transfer date in R317-8-5.5(2)(b).

(b) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit

responsibility, coverage, and liability between them.

(c) The Executive Secretary does not notify the existing permittee and the proposed new permittee of an intent to modify or revoke and reissue the permit. A modification under this subparagraph may also be a minor modification under R317-8-5.6(3). If this notice is not received, the transfer is effective on the date specified in the agreement under R317-8-5.5(2)(b).

#### 5.6 MODIFICATION OR REVOCATION AND REISSUANCE OF PERMIT

The Executive Secretary may determine whether or not one or more of the causes, listed in R317-8-5.6(1) and (2) for modification or revocation and reissuance or both, exist. If cause exists, the Executive Secretary may modify or revoke and reissue the permit accordingly, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. If cause does not exist under this section, the Executive Secretary shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in R317-8-5.6(3) for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and the procedures in R317-8-6 must be followed.

(1) Causes for Modification. The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees to revocation and reissuance as well as modification of a permit.

(a) Alterations. If there are material and substantial alterations or additions made to the permitted facility or activity which occurred after permit issuance, such alterations may justify the application of revised permit conditions which are different or absent in the existing permit.

(b) Information. Information received by the Executive Secretary regarding permitted activities may show cause for modification. UPDES permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance, (except for revised regulations, guidance or test methods) and would have justified application of different conditions at the time of permit issuance. In addition, the applicant must show that the information would have justified the application of different permit conditions at the time of issuance. For UPDES general permits this cause shall include any information indicating that cumulative effects on the environment are unacceptable.

(c) New Regulations. If the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued permits may be modified during their terms for this case only as follows:

1. For promulgation of amended standards or regulations, when:

a. The permit condition requested to be modified was based on promulgated effluent limitation guidelines or promulgated water quality standards; or the Secondary Treatment Regulations; and

b. EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based or has approved the Executive Secretary's action with regard to a water quality standard on which the permit condition was based; and

c. A permittee requests modification in accordance with R317-8-6.1 within ninety (90) days after the amendment, revision or withdrawal is promulgated.

2. For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with R317-8-6.2 within ninety (90) days of judicial remand.

(d) Compliance Schedules. A permit may be modified if the Executive Secretary determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case will a UPDES compliance schedule be modified to extend beyond an applicable statutory deadline in R317-8-7.

(e) In addition the Executive Secretary may modify a permit:

1. When the permittee has filed a request for a variance under R317-8-2.3, R317-8-2.7 or for "fundamentally different factors" within the time specified in R317-8-3 or R317-8-7.7(8)a (and the Executive Secretary processes the request under the applicable provisions).

2. When required to incorporate an applicable toxic effluent standard or prohibition under R317-8-4.2(2).

3. When required by the "reopener" conditions in a permit, which are established in the permit under R317-8-4.2(3) for toxic effluent limitations and standards for sewage sludge use or disposal.

4. Upon request of a permittee who qualifies for effluent limitations on a net basis under R317-8-4.3(8).

5. When a discharger is no longer eligible for net limitations, as provided in R317-8-4.3(8).

6. As necessary under EPA effluent limitations guidelines concerning compliance schedule for development of a pretreatment program.

7. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under R317-8-7.1(2)(c).

8. To establish a "notification level" as provided in R317-8-4.2(6).

9. To modify a schedule of compliance to reflect the time lost during the construction of an innovative or alternative facility in the case of the POTW which has received a grant from EPA of 100% of the cost to modify or replace the facilities. In no case will the compliance schedule be modified to extend beyond an applicable statutory deadline for compliance.

10. Upon failure of the Executive Secretary to notify an affected state whose waters may be affected by a discharge from Utah.

11. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

12. When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required

by a subsequently promulgated effluent limitations guideline).

13. When required by a permit condition to incorporate a land application plan for beneficial reuse of sewage sludge, to revise an existing land application plan, or to add a land application plan.

(2) Causes for Modification or Revocation and Reissuance. The following are causes to modify or alternatively revoke or reissue a permit:

(a) Cause exists for termination under R317-8-5.7 and the Executive Secretary determines that modification or revocation and reissuance is appropriate.

(b) The Executive Secretary has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(3) Minor modifications of permits. Upon the consent of the permittee, the Executive Secretary may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of R317-8-6. Any permit modification not processed as a minor modification under this section must be made for cause and with a Section R317-8-6 draft permit and public notice as required under this section. Minor modifications may only:

(a) Correct typographical errors;

(b) Require more frequent monitoring or reporting by the permittee;

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(d) Allow for a change in ownership or operational control of a facility where the Executive Secretary determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Executive Secretary;

(e) Change the construction schedule for a discharger which is a new source. No such change shall affect a disclosure obligation to have all pollution control equipment installed and in operation prior to discharge; or

(f) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

(g) Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in R317-8-8.10 (or a modification thereto that has been approved in accordance with the procedures in R317-8-8.16 as enforceable conditions of the POTW's permits).

#### 5.7 TERMINATION OF PERMIT

(1) The following are causes for terminating a permit during its term, or for denying a renewal application:

(a) Noncompliance by the permittee with any condition of the permit;

(b) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's

misrepresentation of any relevant fact at any time;

(c) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

(d) When there is a change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit; for example, plant closure or termination of discharge by connection to a POTW.

(2) The Executive Secretary will follow the applicable procedures of R317-8-6.2 in terminating UPDES permits under this section.

#### **R317-8-6. REVIEW PROCEDURES.**

##### **6.1 REVIEW OF THE APPLICATION**

(1) Any person who requires a permit under the UPDES program shall complete, sign and submit to the Executive Secretary an application for the permit as required under R317-8-3.1. Applications are not required for UPDES general permits. (However, operators who elect to be covered by a general permit shall submit written notification to the Executive Secretary at such time as the Executive Secretary indicates in R317-8-6.3)

(2) The Executive Secretary will not begin the processing of a permit until the applicant has fully complied with the application requirements for the permit, as required by R317-8-3.1.

(3) Permit applications must comply with the signature and certification requirements of R317-8-3.1.

(4) Each application submitted by a UPDES new source or UPDES new discharger should be reviewed for completeness by the Executive Secretary within thirty (30) days of its receipt. Each application for a UPDES permit submitted by an existing source or sludge-only facility will be reviewed for completeness within sixty (60) days of receipt. Upon completing the review, the Executive Secretary shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Executive Secretary shall list the information necessary to make the application complete. When the application is for an existing source or sludge-only facility, the Executive Secretary shall specify in the notice of deficiency a date for submitting the necessary information. The Executive Secretary shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Executive Secretary may request additional information from an applicant when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.

(5) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the Utah Water Quality Act, as amended and regulations promulgated pursuant thereto.

(6) If the Executive Secretary decides that a site visit is necessary for any reason in conjunction with the processing of an application, the applicant will be notified and a date scheduled.

(7) The effective date of an application is the date on which the Executive Secretary notified the applicant that the application is complete as provided in subsection (4) of this section.

(8) For each application from a major facility new source, or major

facility new discharger, the Executive Secretary shall no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule will specify target dates by which the Executive Secretary intends to:

- (a) Prepare a draft permit;
- (b) Give public notice;
- (c) Complete the public comment period, including any public hearing;
- (d) Issue a final permit; and
- (e) Complete any formal proceedings under the UPDES regulations.

#### 6.2 REVIEW PROCEDURES FOR PERMIT MODIFICATION, REVOCATION AND REISSUANCE, OR TERMINATION OF PERMITS

(1) Permits may only be modified, revoked and reissued, or terminated for the reasons specified in R317-8-5.6. Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Executive Secretary's initiative. All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the Executive Secretary decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.

(3) If the Executive Secretary tentatively decides to modify or revoke and reissue a permit under R317-8-5.6, he or she shall prepare a draft permit under R317-8-6.3 incorporating the proposed changes. The Executive Secretary may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Executive Secretary shall require the submission of a new application.

(a) In a permit modification under .2, only those conditions to be modified will be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under .2, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(b) "Minor modifications" as defined in R317-8-5.6(3) are not subject to the requirements of .2.

(4) If the Executive Secretary tentatively decides to terminate a permit under R317-8-5.7, he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under R317-8-6.3.

#### 6.3 DRAFT PERMITS

(1) Once an application is complete, the Executive Secretary shall tentatively decide whether to prepare a draft permit or to deny the application.

(2) If the Executive Secretary tentatively decides to deny the permit application, then he or she shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedure as any draft permit prepared under this section. If the Executive Secretary's final decision

(under R317-8-6.11) is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the notice of intent to deny and proceed to prepare a draft permit under R317-8-6.3(4).

(3) If the Executive Secretary tentatively decides to issue a UPDES general permit, he or she shall prepare a draft general permit in accordance with R317-8-6.3(4).

(4) If the Executive Secretary decides to prepare a draft permit he or she shall prepare a draft permit that contains the following information:

- (a) All conditions under R317-8-4.1;
- (b) All compliance schedules under R317-8-5.2;
- (c) All monitoring requirements under R317-8-5.3;
- (d) Effluent limitations, standards, prohibitions, standards for sewage sludge use or disposal, and conditions under R317-8-3, 8-4, 8-5, 8-6, and 8-7 and all variances that are to be included.

(5) All draft permits prepared under this section shall be accompanied by a statement of basis or fact sheet and shall be based on the administrative record, publicly noticed, and made available for public comment. The Executive Secretary will give notice of opportunity for a public hearing, issue a final decision and respond to comments. A request for a hearing may be made pursuant to the Utah Water Quality Act, as amended, following the issuance of a final decision.

(6) Statement of Basis. A statement of basis shall be prepared for every draft permit for which a fact sheet is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

#### 6.4 FACT SHEETS

(1) A fact sheet shall be prepared for every draft permit for a major UPDES facility or activity, for every UPDES general permit, for every UPDES draft permit that incorporates a variance or requires an explanation under R317-8-6.4(4), for every Class I Sludge Management Facility, for every draft permit that includes a sewage sludge land application plan and for every draft permit which the Executive Secretary finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Executive Secretary shall send this fact sheet to the applicant and, on request, to any other persons.

(2) The fact sheet shall include, when applicable:

- (a) A brief description of the type of facility or activity which is the subject of the draft permit;

- (b) The type and quantity of wastes, fluids or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

- (c) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

- (d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

- (e) A description of the procedures for reaching a final decision on the draft permit including:



1. The beginning and ending dates of the comment period and the address where comments will be received;

2. Procedures for requesting a hearing and the nature of that hearing; and

3. Any other procedures by which the public may participate in the final decision.

(f) Name and telephone number of a person to contact for additional information.

(3) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, or standards for sewage sludge use and disposal, including a citation to the applicable effluent limitation guideline or performance standard provisions, and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;

(4)(a) When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

1. Limitations to control toxic pollutants under R317-8-4.2(5);

2. Limitations on internal waste streams under R317-8-4.3(8);

3. Limitations on indicator pollutant;

4. Limitations set on a case-by-case basis under R317-8-7.1(3)(b)

or (c).

(b) For every permit to be issued to a treatment works owned by a person other than the State or a municipality, an explanation of the Executive Secretary's decision on regulation of users under R317-8-4.2(12).

(5) When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application.

(6) For permits that include a sewage sludge land application plan, a brief description of how each of the required elements of the land application plan are addressed in the permit.

(7) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for sewage sludge use or disposal and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.

#### 6.5 PUBLIC NOTICE OF PERMIT ACTIONS AND PUBLIC COMMENT PERIOD

(1) Scope.

(a) The Executive Secretary will give public notice that the following actions have occurred:

1. A permit application has been tentatively denied under R317-8-6.3(2); or

2. A draft permit has been prepared under R317-8-6.3(4);

3. A hearing has been scheduled under R317-8-6.7; and

4. A UPDES new source determination has been made in accordance with the definition in R317-8-1.

(b) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under .2. Written notice of the denial will be given to the requester and to the permittee.

(c) Public notices may describe more than one permit or permit action.

(2) Timing.

(a) Public notice of the preparation of a draft permit, including a notice of intent to deny a permit application, required under R317-8-6.5(1) will allow at least thirty (30) days for public comment.

(b) Public notice of a public hearing shall be given at least thirty (30) days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

(3) Methods. Public notice of activities described in R317-8-6.5(1)(a) will be given by the following methods:

(a) By mailing a copy of a notice to the following persons (Any person otherwise entitled to receive notice under this paragraph may waive their rights to receive notice for any classes and categories of permits.):

1. The applicant, except for UPDES general permittees, and Region VIII, EPA.

2. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the Advisory Council on Historic Preservation, Utah Historic Society and other appropriate government authorities, including any affected states;

3. The U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service.

4. Any user identified in the permit application of a privately owned treatment works; and

5. Persons on a mailing list developed by:

a. Including those who request in writing to be on the list;

b. Soliciting persons for area lists from participants in past permit proceedings in that area; and

c. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as newsletters, environmental bulletins, or state law journals. The Executive Secretary may update the mailing list from time to time by requesting written indication of continued interest from those listed. The name of any person who fails to respond to such a request may be deleted from the list.

6. Any unit of local government having jurisdiction over the area where the facility is proposed to be located and each State agency having any authority under State law with respect to construction or operation of such facility.

7. Any other agency which the Executive Secretary knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Federal Clean Air Act, NPDES, 404, or sludge management permit).

(b) For major permits, UPDES general permits, and permits that include sewage sludge and application plans, the Executive Secretary will publish a notice in a daily or weekly newspaper within the area affected by the facility or activity;

(c) In a manner constituting legal notice to the public under Utah law; and

(d) Any other method reasonably determined to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(4) Contents.

(a) All public notices issued under this part shall contain the

following minimum information:

1. Name and address of the office processing the permit action for which notice is being given;

2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of UPDES draft general permits under R317-8-2.5;

3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for UPDES general permits when there is no application;

4. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit as the case may be, statement of basis or fact sheet, and the application; and

5. A brief description of the comment procedures and the time and place of any hearing that will be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled, and other procedures by which the public may participate in the final permit decision;

6. For UPDES permits only (including those for sludge-only facilities), a general description of the location of each existing or proposed discharge point and the name of the receiving water and the sludge use and disposal practice(s) and the location of each sludge treatment works treating domestic sewage and use or disposal sites known at the time of permit application. For draft general permits, this requirement will be satisfied by a map or description of the permit area;

7. Any additional information considered necessary or appropriate.

(b) Public notices for hearings. In addition to the general public notice described in .5(4) the public notice for a permit hearing under R317-8-6.7 will contain the following information:

1. Reference to the date of previous public notices relating to the permit;

2. Date, time, and place of the hearing;

3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(c) Requests under R317-8-2.3(4). In addition to the information required under R317-8-6.5(4)(a) public notice of a UPDES draft permit for a discharge when a R317-8-2.3(4) request has been filed will include:

1. A statement that the thermal component of the discharge is subject to effluent limitations under R317-8-4.2(1) and a brief description, including a quantitative statement of the thermal effluent limitations; and

2. A statement that a R317-8-2.3(4) request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request.

3. If the applicant has filed an early screening request under R317-8-7.4(4) for a variance, a statement that the applicant has submitted such a plan.

(5) In addition to the general public notice described in .5(4) all persons identified in .5(3)(a)1-4 will be mailed a copy of the fact sheet, the permit application and the draft permit.

#### 6.6 PUBLIC COMMENTS AND REQUESTS FOR PUBLIC HEARINGS

During the public comment period provided under R317-8-6.5, any

interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments will be considered in making the final decision and shall be answered as provided in R317-8-6.12.

#### 6.7 PUBLIC HEARINGS

(1) The Executive Secretary shall hold a public hearing when he or she finds on the basis of request(s), a significant degree of public interest in draft permits. The Executive Secretary also may hold a public hearing at his or her discretion whenever a hearing might clarify one or more issues involved in the permit decision.

(2) Public notice of the hearing will be given as specified in R317-8-6.5.

(3) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under R317-8-6.5 will automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(4) A tape recording or written transcript of the hearing shall be made available to the public.

#### 6.8 OBLIGATION TO RAISE ISSUES AND PROVIDE INFORMATION DURING THE PUBLIC COMMENT PERIOD

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Executive Secretary's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period including any public hearing under R317-8-6.5. All supporting materials shall be included in full and may not be incorporated by reference, unless they are already part of the administrative records in the same proceeding or consist of state or federal statutes and regulations, EPA or the Executive Secretary's documents of general applicability, or other generally available reference materials. Persons making comment shall make supporting material not already included in the administrative record available to the Executive Secretary. Additional time shall be granted under R317-8-6.5 to the extent that a person desiring to comment who requests additional time demonstrates need for such time. Nothing in this section shall be construed to prevent any person aggrieved by a final permit decision from filing a request for a hearing under R317-8-6.13.

#### 6.9 CONDITIONS REQUESTED BY THE CORPS OF ENGINEERS AND OTHER GOVERNMENT AGENCIES

(1) If, during the comment period for a UPDES draft permit, the District Engineer of the Corps of Engineers advises the Executive Secretary in writing that anchorage and navigation of the waters of the State would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the District Engineer advises the Executive Secretary that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Executive Secretary shall

include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the District Engineer shall be made through the applicable procedures of the Corps of Engineers and may not be made through the procedures provided in this regulation. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures or the Corps of Engineers, those conditions shall be considered stayed in the UPDES permit for the duration of that stay.

(2) If, during the comment period, the U.S. Fish and Wildlife Service or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the Executive Secretary in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the Executive Secretary may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of the Utah Water Quality Act, as amended, and of CWA.

(3) In appropriate cases the Executive Secretary may consult with one or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the statement of basis or fact sheet, or the draft permit.

#### 6.10 REOPENING OF THE PUBLIC COMMENT PERIOD

(1) The Executive Secretary may order the public comment period reopened if the procedures of this section could expedite the decision making process. When the public comment period is reopened under this paragraph, all persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Executive Secretary's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their position, including all supporting material, by a date not less than sixty days after public notice under paragraph (2) of this section, set by the Executive Secretary. Thereafter, any person may file a written response to the material filed by any other person, by a date not less than twenty days after the date set for filing of the material, set by the Executive Secretary.

(2) Public notice of any comment period under this paragraph shall identify the issues to which the requirements of this section shall apply.

(3) On his own motion or on the request of any person, the Executive Secretary may direct that the requirements of paragraph (1) of this section shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (1) of this section will substantially expedite the decision making process. The notice of the draft permit shall state whenever this has been done.

(4) A comment period of longer than 60 days will often be necessary in complicated proceedings to give persons desiring to comment a reasonable opportunity to comply with the requirements of this section. Persons desiring to comment may request longer comment periods and they shall be granted under R317-8-6.5 to the extent they appear necessary.

(5) If any data information or arguments submitted during the public comment period, including information or arguments required under R317-8-6.8, appear to raise substantial new questions concerning a permit, the Executive Secretary may take one or more of the following actions:

(a) Prepare a new draft permit, appropriately modified, under R317-

8-6.3;

(b) Prepare a revised statement of basis under R317-8-6.3(6) a fact sheet or revised fact sheet under R317-8-6.4 and reopen the comment period under R317-8-6.10; or

(c) Reopen or extend the comment period under R317-8-6.5 to give interested persons an opportunity to comment on the information or arguments submitted.

(6) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under R317-8-6.5 shall define the scope of the reopening.

(7) For UPDES permits, the Executive Secretary may also, in the circumstances described above, elect to hold further proceedings. This decision may be combined with any of the actions enumerated in paragraph (5) of this section.

(8) Public notice of any of the above actions shall be issued under R317-8-6.5.

#### 6.11 ISSUANCE AND EFFECTIVE DATE OF PERMIT

(1) After the close of the public comment period under R317-8-6.5, the Executive Secretary will issue a final permit decision. The Executive Secretary will notify the applicant and each person who has submitted written comments or requested notice of that decision. The notice shall include reference to the procedures for appealing the decision. For the purpose of this section, a final permit decision shall mean a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(2) A final permit decision shall become effective 30 days after the service of notice of the decision under R317-8-6.11(1) unless:

(a) A later effective date is specified in the decision; or an evidentiary hearing is requested as per these regulations; or

(b) A stay is granted pursuant to the Utah Water Quality Act, as amended and R317-8-6.13;

(c) No comments requested a change in the draft permit, in which case the permit shall become effective immediately upon issuance.

(3) The order or determination which is a condition precedent to requesting a hearing under the Utah Water Quality Act, as amended and R317-8-6.13 shall be the final permit decision. The thirty (30) day appeal period shall begin on the date the order is entered by the Executive Secretary and shall not begin on the date the permit decision becomes effective.

#### 6.12 RESPONSE TO COMMENTS

(1) At the time that any final permit decision is issued under R317-8-6.11, the Executive Secretary shall issue a response to comments. This response shall:

(a) Specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the change; and

(b) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing. The response will fully consider all comments resulting from any hearing conducted under this regulation.

(c) The response to the comments shall be available to the public. Any request for a hearing on the response shall be filed according to procedures specified in the Utah Water Quality Act, as amended and rules promulgated pursuant thereto.

#### 6.13 HEARINGS UNDER THE WATER QUALITY ACT, AS AMENDED

(1) A determination under R317-8-6.11, when issued by the Executive Secretary, will be subject to a request for a hearing pursuant to the Utah Water Quality Act, as amended.

(2) Any person aggrieved by the issuance of a final permit may demand a hearing pursuant to the Utah Water Quality Act, as amended.

(3) Any hearing held pursuant to this section will be subject to the provisions of the Utah Water Quality Act, as amended.

(4) Failure to raise issues pursuant to R317-8-6.8 will not preclude an aggrieved person from making a demand for a hearing pursuant to the Utah Water Quality Act, as amended.

#### **R317-8-7. CRITERIA and Standards.**

##### **7.1 CRITERIA AND STANDARDS FOR TECHNOLOGY-BASED TREATMENT REQUIREMENTS**

(1) Purpose and scope. This section establishes criteria and standards for the imposition of technology-based treatment requirements and represents the minimum level of control that must be imposed in a UPDES permit. Permits will contain the following technology-based treatment requirements in accordance with the deadlines indicated herein:

(a) For POTW's effluent limitations based upon:

1. Utah secondary treatment from date of permit issuance; and
2. The best practicable waste treatment technology from date of permit issuance.

(b) For dischargers other than POTWs, except as otherwise provided, effluent limitations requiring:

1. The best practicable control technology currently available (BPT) --

a. For effluent limitations promulgated after January 1, 1982 and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated and in no case later than March 31, 1989;

b. For effluent limitations established on a case-by-case basis based on Best Professional Judgment (BPJ) in a permit issued after February 4, 1987, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established and in no case later than May 31, 1989;

c. For all other BPT effluent limitations compliance is required from the date of permit issuance.

2. For conventional pollutants the best conventional pollutant control technology (BCT) --

a. For effluent limitations promulgated under section 304(b) of the CWA, as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated, and in no case later than March 31, 1989;

b. For effluent limitations established on a case-by-case (BPJ) basis in a permit issued after February 4, 1987 compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established and in no case later than March 31, 1989;

c. For all other BCT effluent limitations compliance is required from the date of permit issuance.

3. For all toxic pollutants referred to in Committee Print No. 95-30, House Committee on Public Works and Transportation, the best available technology economically achievable (BAT) --

a. For effluent limitations established under section 304(b) of the CWA, as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated and in no case later than March 31, 1989;

b. For permits issued on a case-by-case (BPJ) basis after February 4, 1987 establishing BAT effluent limitations, compliance is required as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under Section 304(b) of the CWA and in no case later than March 31, 1989.

c. For all other BAT effluent limitations, compliance is required from the date of permit issuance.

4. For all toxic pollutants other than those listed on Committee Print No. 95-30, effluent limitations based on BAT --

a. For effluent limitations promulgated under Section 304(b) of the CWA, compliance is required as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated, and in no case later than March 31, 1989.

b. For permits issued on a case-by-case (BPJ) basis under section 402(a)(1)(B) of the CWA after February 4, 1987 establishing BAT effluent limitations, compliance is required as expeditiously as practicable but in no case later than 3 years after the date such limitations are established and in no case later than March 31, 1989.

c. For all other BAT effluent limitations, compliance is required from the date of permit issuance.

5. For all pollutants which are neither toxic nor conventional pollutants, effluent limitations based on BAT --

a. For effluent limitations promulgated under section 304(b), compliance is required as expeditiously as practicable but in no case later than 3 years after the date such limitations are established and in no case later than March 31, 1989.

b. For permits issued on a case-by-case (BPJ) basis under section 402(a)(1)(B) of the CWA after February 4, 1987 establishing BAT effluent limitations compliance is required as expeditiously as practicable but in no case later than March 31, 1989.

c. For all other BAT effluent limitations, compliance is required from the date of permit issuance.

(2) Variances and Extensions.

(a) The following variance from technology-based treatment requirements may be applied for under R317-8-2 for dischargers other than POTWs:

1. Economic variance from BAT, as indicated in R317-8-2.3(2);
2. Section 301(g) water quality related variance from BAT;
3. Thermal variance from BPT, BCT and BAT, under R317-8-7.4. may be authorized.

(b) An extension of the BPT deadline may be applied for under R317-8-2.3(3) for dischargers other than POTW's, for use of innovative technology. Compliance extensions may not extend beyond July 1, 1987.

(3) Methods of imposing technology-based treatment requirements in permits. Technology-based treatment requirements may be imposed through one of the following three methods:

(a) Application of EPA-promulgated effluent limitations to



dischargers by category or subcategory. These effluent limitations are not applicable to the extent that they have been withdrawn by EPA or remanded. In the case of a court remand, determinations underlying effluent limitations shall be binding in permit issuance proceedings where those determinations are not required to be reexamined by a court remanding the regulations. In addition, dischargers may seek fundamentally different factors variance from these effluent limitations under R317-8-2.3(1) and R317-8-7.3;

(b) On a case-by-case basis to the extent that EPA-promulgated effluent limitations are inapplicable. The permit writer shall apply the appropriate factors and shall consider:

1. The appropriate technology for the category or class of point sources of which the applicant is a member, based upon all available information.

2. Any unique factors relating to the applicant.

(c) Through a combination of the methods in paragraphs (a) and (b) of this section. Where EPA promulgated effluent limitations guidelines only apply to certain aspects of the discharger's operation, or to certain pollutant, other aspects or activities are subject to regulation on case-by-case basis in order to carry out the provisions of the CWA;

(d) Limitations developed under paragraph (c)2 of this section may be expressed, where appropriate, in terms of toxicity provided it is shown that the limits reflect the appropriate requirements of the act;

(e) In setting case-by-case limitations pursuant to R317-8-7.1(3), the permit writer must consider the following factors:

1. For BPT requirements:

a. The total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application;

b. The age of equipment and facilities involved;

c. The process employed;

d. The engineering aspects of the application of various types of control techniques;

e. Process changes; and

f. Non-water quality environmental impact (including energy requirements).

2. For BCT requirements:

a. The reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived;

b. The comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources;

c. The age of equipment and facilities involved;

d. The process employed;

e. The engineering aspects of the application of various types of control techniques;

f. Process changes; and

g. Non-water quality environmental impact (including energy requirements).

3. For BAT requirement:

a. The age of equipment and facilities involved;

b. The process employed;

c. The engineering aspects of the application of various types of

control techniques;

d. The cost of achieving such effluent reduction; and

e. Non-water quality environmental impact (including energy requirements).

(f) Technology-based treatment requirements are applied prior to or at the point of discharge.

(4) Technology-based treatment requirements cannot be satisfied through the use of "non-treatment" techniques such as flow augmentation and in-stream mechanical aerators. However, these techniques may be considered as a method of achieving water quality standards on a case-by-case basis when:

(a) The technology based treatment requirements applicable to the discharge are not sufficient to achieve the standards;

(b) The discharger agrees to waive any opportunity to request a variance under R317-8-2.3;

(c) The discharger demonstrates that such a technique is the preferred environmental and economic method to achieve the standards after consideration of alternatives such as advanced waste treatment, recycle and reuse, land disposal, changes in operating methods, and other available methods.

(5) Technology-based effluent limitations will be established for solids, sludges, filter backwash, and other pollutants removed in the course of treatment or control of wastewaters in the same manner as for other pollutants.

(6)(a) The Executive Secretary may set a permit limit for a conventional pollutant at a level more stringent than the best conventional pollution control technology (BCT), or limit for a nonconventional pollutant which shall not be subject to modification where:

1. Effluent limitations guidelines specify the pollutant as an indicator for a toxic pollutant; or

2.a. The limitation reflects BAT-level control of discharges of one or more toxic pollutants which are present in the waste stream, and a specific BAT limitation upon the toxic pollutant(s) is not feasible for economic or technical reasons;

b. The permit identifies which toxic pollutants are intended to be controlled by use of the limitation; and

c. The fact sheet required by R317-8-6.4 sets forth the basis for the limitation, including a finding that compliance with the limitations will result in BAT-level control of the toxic pollutant discharges identified in (6)(1)(b)(ii) of this section, and a finding that it would be economically or technically infeasible to directly limit the toxic pollutant(s).

(b) The Executive Secretary may set a permit limit for a conventional pollutant at a level more stringent than BCT when:

1. Effluent limitations guidelines specify the pollutant as an indicator for a hazardous substances; or

2.a The limitation reflects BAT-level, co-control of discharges, or an appropriate level of one or more hazardous substance(s) which are present in the waste stream, and a specific BAT or other appropriate limitation upon the hazardous substance which are present in the waste stream, and a specific BAT, or other appropriate limitation upon the hazardous substance is not feasible for economic or technical reasons;

b. The permit identifies which hazardous substances are intended

to be controlled by use of the limitation; and

c. The fact sheet required by R317-8-6.4 sets forth the basis for the limitation, including a finding that compliance with the limitations will result in BAT-level, or other appropriate level, control of the hazardous substances discharges identified in (6)(1)(b)(ii) of this section, and a finding that it would be economically or technically infeasible to directly limit the hazardous substance(s).

d. Hazardous substances which are also toxic pollutants are subject to R317-8-7.1(6).

(3) The Executive Secretary may not set more stringent limits under the preceding paragraphs if the method of treatment required to comply with the limit differs from that which would be required if the toxic pollutant(s) or hazardous substances) controlled by the limit were limited directly.

(d) Toxic pollutants identified under R317-8-7.1(6) remain subject to R317-8-4.1(15) which requires notification of increased discharges of toxic pollutants above levels reported in the application form.

## 7.2. CRITERIA FOR ISSUANCE OF PERMITS TO AQUACULTURE PROJECTS

### (1) Purpose and scope.

(a) This section establishes guidelines for approval of any discharge of pollutants associated with an aquaculture project.

(b) This section authorizes, on a selective basis, controlled discharges which would otherwise be unlawful under the Utah Water Quality Act in order to determine the feasibility of using pollutants to grow aquatic organisms which can be harvested and used beneficially.

(c) Permits issued for discharges into aquaculture projects under this section are UPDES permits and are subject to all applicable requirements. Any permit will include such conditions, including monitoring and reporting requirements, as are necessary to comply with the UPDES regulations. Technology-based effluent limitations need not be applied to discharges into the approved project except with respect to toxic pollutants.

### (2) Criteria.

(a) No UPDES permit will be issued to an aquaculture project unless:

1. The Executive Secretary determines that the aquaculture project:

a. Is intended by the project operator to produce a crop which has significant direct or indirect commercial value, or is intended to be operated for research into possible production of such a crop; and

b. Does not occupy a designated project area which is larger than can be economically operated for the crop under cultivation or than is necessary for research purposes.

2. The applicant has demonstrated, to the satisfaction of the Executive Secretary, that the use of the pollutant to be discharged to the aquaculture project shall result in an increased harvest of organisms under culture over what would naturally occur in the area;

3. The applicant has demonstrated, to the satisfaction of the Executive Secretary, that if the species to be cultivated in the aquacultural project is not indigenous to the immediate geographical area, there shall be minimal adverse effects on the flora and fauna indigenous to the area, and the total commercial value of the introduced species is at least equal to that of the displaced or affected indigenous flora and fauna;

4. The Executive Secretary determines that the crop will not have

significant potential for human health hazards resulting from its consumption;

5. The Executive Secretary determines that migration of pollutants from the designated project area to waters of the State outside of the aquaculture project will not cause or contribute to a violation of the water quality or applicable standards and limitations applicable to the supplier of the pollutant that would govern if the aquaculture project were itself a point source. The approval of an aquaculture project shall not result in the enlargement of a pre-existing mixing zone area beyond what had been designated by the State for the original discharge.

(b) No permit will be issued for any aquaculture project in conflict with a water quality management plan or an amendment to a 208 plan approved by EPA.

(c) Designated project areas shall not include a portion of a body of water large enough to expose a substantial portion of the indigenous biota to the conditions within the designated project area.

(d) Any pollutants not required by or beneficial to the aquaculture crop shall not exceed applicable standards and limitations when entering the designated project area.

#### 7.3 CRITERIA AND STANDARDS FOR DETERMINING FUNDAMENTALLY DIFFERENT FACTORS

(1) Purpose and scope.

(a) This section establishes the criteria and standards to be used in determining whether effluent limitations required by effluent limitations guidelines hereinafter referred to as "national limits", should be imposed on a discharger because factors relating to the discharger's facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national limits. This section applies to all national limits promulgated except for best practicable treatment (BPT) standards for stream electric plants.

(b) In establishing national limits, EPA takes into account all the information it can collect, develop and solicit regarding the factors listed in sections 304(g) of the Clean Water Act. In some cases, however, data which could affect these national limits as they apply to a particular discharge may not be available or may not be considered during their development. As a result, it may be necessary on a case-by-case basis to adjust the national limits, and make them either more or less stringent as they apply to certain dischargers within an industrial category or subcategory. This will only be done if data specific to that discharger indicates it presents factors fundamentally different from those considered in developing the limit at issue. Any interested person believing that factors relating to a discharger's facilities, equipment, processes or other facilities related to the discharger are fundamentally different from the factors considered during development of the national limits may request a fundamentally different factors variance under R317-8-2.3(1). In addition, such a variance may be proposed by the Executive Secretary in the draft permit.

(2) Criteria.

(a) A request for the establishment of effluent limitations under this section shall be approved only if:

1. There is an applicable national limit which is applied in the permit and specifically controls the pollutant for which alternative effluent limitations or standards have been requested; and

2. Factors relating to the discharge controlled by the permit are fundamentally different from those considered by EPA in establishing the national limit; and

3. The request for alternative effluent limitations or standards is made in accordance with the procedural requirements of R317-8-6.

(b) A request for the establishment of effluent limitations less stringent than those required by national limits guidelines will be approved only if:

1. The alternative effluent limitation requested is not less stringent than justified by the fundamental difference; and

2. The alternative effluent limitation or standard will ensure compliance with the UPDES regulations and the Utah Water Quality Act.

3. Compliance with the national limits, either by using the technologies upon which the national limits are based or by other control alternative, would result in:

a. A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

b. A non-water quality environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the national limits.

(c) A request for alternative limits more stringent than required by national limits shall be approved only if:

1. The alternative effluent limitation or standard requested is no more stringent than justified by the fundamental difference; and

2. Compliance with the alternative effluent limitation or standard would not result in:

a. A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

b. A non-water quality environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the national limits.

(d) Factors which may be considered fundamentally different are:

1. The nature or quality of pollutants contained in the raw wasteload of the applicant's process wastewater;

2. The volume of the discharger's process wastewater and effluent discharged;

3. Non-water quality environmental impact of control and treatment of the discharger's raw waste load;

4. Energy requirements of the application of control and treatment technology;

5. Age, size, land availability, and configuration as they relate to the discharger's equipment or facilities; processes employed; process changes; and engineering aspects of the application of control technology;

6. Cost of compliance with required control technology.

(c) A variance request or portion of such a request under this section will not be granted on any of the following grounds:

1. The infeasibility of installing the required waste treatment equipment within the time allowed in R317-8-7.1.

2. The assertion that the national limits cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factor(s) listed in paragraph (d) of this section;

3. The discharger's ability to pay for the required waste-treatment; or

4. The impact of a discharge on local receiving water quality.

(3) Method of application.

(a) A written request for a variance under this regulation shall be submitted in duplicate to the Executive Secretary in accordance with R317-8-6.

(b) The burden is on the person requesting the variance to explain that:

1. Factor(s) listed in subsection (2) of this section regarding the discharger's facility are fundamentally different from the factors EPA considered in establishing the national limits. The person making the request shall refer to all relevant material and information, such as the published guideline regulations development document, all associated technical and economic data collected for use in developing each national limit, all records of legal proceedings, and all written and printed documentation including records of communication relevant to the regulations.

2. The alternative limitations requested are justified by the fundamental difference alleged in subparagraph 1 of this subsection; and

3. The appropriate requirements of subsection 2 of this section have been met.

#### 7.4 CRITERIA FOR DETERMINING ALTERNATIVE EFFLUENT LIMITATIONS

(1) Purpose and scope. The factors, criteria and standards for the establishment of alternative thermal effluent limitations will be used in UPDES permits and will be referred to as R317-8-2.3(4) variances.

(2) Definitions. For the purpose of this section:

(a) "Alternative effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of any discharge which are established under R317-8-2.3(4).

(b) "Representative important species" means species which are representative of a balanced, indigenous community of shellfish and wildlife in the body of water into which a discharge of heat is made.

(c) The term "balanced, indigenous community" means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species and by a lack of domination by pollution tolerant species. Such a community may include historically non-native species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modification. Normally, however, such a community will not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance by all sources with R317-8-4.1(1)(6) and may not include species whose presence of abundance is attributable to alternative effluent limitations imposed pursuant to R317-8-2.3(4).

(3) Early screening of applications for R317-8-2.3(4) variance.

(a) Any initial application for the variance shall include the following early screening information:

1. A description of the alternative effluent limitation requested;

2. A general description of the method by which the discharger proposes to demonstrate that the otherwise applicable thermal discharge effluent limitations are more stringent than necessary;

3. A general description of the type of data, studies, experiments and other information which the discharger intends to submit for the demonstration; and

4. Such data and information as may be available to assist the Executive Secretary in selecting the appropriate representative important species.

(b) After submitting the early screening information under paragraph (a) of this subsection, the discharger shall consult with the Executive Secretary at the earliest practicable time, but not later than thirty (30) days after the application is filed, to discuss the discharger's early screening information. Within sixty (60) days after the application is filed, the discharger shall submit for the Executive Secretary's approval a detailed plan of study which the discharger will undertake to support its R317-8-2.3(4) demonstration. The discharger shall specify the nature and extent of the following type of information to be included in the plan of study: biological, hydrographical and meteorological data; physical monitoring data; engineering or diffusion models; laboratory studies; representative important species; and other relevant information. In selecting representative important species, special consideration shall be given to species mentioned in applicable water quality standards. After the discharger submits its detailed plan of study, the Executive Secretary will either approve the plan or specify any necessary revisions to the plan. The discharger shall provide any additional information or studies which the Executive Secretary subsequently determines necessary to support the demonstration, including such studies or inspections as may be necessary to select representative important species. The discharger may provide any additional information or studies which the discharger feels are appropriate to support the administration.

(c) Any application for the renewal of R317-8-2.3(4) variance shall include only such information described in R317-8-7.4(3)(a) and (b) and R317-8-6 as the Executive Secretary requests within sixty (60) days after receipt of the permit application.

(d) The Executive Secretary shall promptly notify the Secretaries of the U.S. Departments of Commerce and Interior and any affected state of the filing of the request and shall consider any timely recommendations they submit.

(e) In making the demonstration the discharger shall consider any information or guidance published by EPA to assist in making such demonstrations.

(f) If an applicant desires a ruling on a R317-8-2.7 (4) application before the ruling on any other necessary permit terms and conditions, it shall so request upon filing its application under paragraph (a) of this subsection. This request will be granted or denied at the discretion of the Executive Secretary.

(4) Criteria and standards for the determination of alternative effluent limitations.

(a) Thermal discharge effluent limitations or standards established in permits may be less stringent than those required by applicable standards and limitations if the discharger demonstrates to the satisfaction of the Executive Secretary that such effluent limitations are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made. This demonstration shall show that the alternative effluent desired by the discharger, considering the cumulative impact of its thermal discharge together with all other significant impacts on the species

affected, will assure the protection and propagation of a balanced indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made.

(b) In determining whether or not the protection and propagation of the affected species will be assured, the Executive Secretary may consider any information contained or referenced in any applicable thermal water quality criteria and information published by the Administrator under CWA section 304(a) (33 U.S.C. Section 1314(a)) or any other information which may be relevant.

(c) Existing dischargers may base their demonstration upon the absence of prior appreciable harm in lieu of predictive studies. Any such demonstrations shall show:

1. That no appreciable harm has resulted from the normal component of the discharge, taking into account the interaction of such thermal component with other pollutants and the additive effect of other thermal sources to a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge has been made; or

2. That despite the occurrence of such previous harm, the desired alternative effluent limitations, or appropriate modifications thereof, shall nevertheless assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made.

(5) In determining whether or not appreciable harm has occurred, the Executive Secretary will consider the length of time in which the applicant has been discharging and the nature of the discharge.

#### 7.5 CRITERIA AND STANDARDS FOR BEST MANAGEMENT PRACTICES

##### (1) Purpose and Scope.

Best management practices (BMPs) for ancillary industrial activities shall be reflected in permits, including best management practices promulgated in effluent limitations and established on a case-by-case basis in permits.

##### (2) Definition.

"Manufacture" means to produce as an intermediate or final product, or by-product.

##### (3) Applicability of best management practices.

Dischargers who use, manufacture, store, handle or discharge any pollutant listed as toxic or any pollutant listed as hazardous are subject to the requirements of R317-8-7.5 for all activities which may result in significant amounts of those pollutants reaching waters of the State. These activities are ancillary manufacturing operations including: Materials storage areas; in-plant transfer, process and material handling areas; loading and unloading operations; plant site runoff; and sludge and waste disposal areas.

##### (4) Permit terms and conditions.

(a) Best management practices shall be expressly incorporated into a permit where required by an applicable promulgated effluent limitations guideline;

(b) Best management practices may be expressly incorporated into a permit on a case-by-case basis where determined necessary. In issuing a permit containing BMP requirements, the Executive Secretary shall consider the following factors:

1. Toxicity of the pollutant(s);
2. Quantity of the pollutants(s) used, produced, or discharged;



3. History of UPDES permit violations;
  4. History of significant leaks or spills of toxic or hazardous pollutants;
  5. Potential for adverse impact on public health (e.g., proximity to a public water supply) or the environment (e.g., proximity to a sport or commercial fishery); and
  6. Any other factors determined to be relevant to the control of toxic or hazardous pollutants.
- (c) Best management practices may be established in permits under R317-8-7.5(4)(b) alone or in combination with those required under R317-8-7.5(4)(a).
- (d) In addition to the requirements of R317-8-7.5(4)(a) and (b), dischargers covered under R317-8-7.5(4) shall develop and implement a best management practices program in accordance with R317-8-7.5(5) which prevents, or minimizes the potential for, the release of toxic or hazardous pollutants from ancillary activities to waters of the State.
- (5) Best management practices programs.
- (a) BMP programs shall be developed in accordance with good engineering practices and with the provisions of this subpart.
- (b) The BMP program shall:
1. Be documented in narrative form, and shall include any necessary plot plans, drawings or maps;
  2. Establish specific objectives for the control of toxic and hazardous pollutants.
    - a. Each facility component or system shall be examined for its potential for causing a release of significant amounts of toxic or hazardous pollutants to waters of the State due to equipment failure, improper operation, natural phenomena such as rain or snowfall.
    - b. Where experience indicates a reasonable potential for equipment failure (e.g., a tank overflow or leakage), natural condition (e.g., precipitation), or other circumstances to result in significant amounts of toxic or hazardous pollutants reaching surface waters, the program should include a prediction of the direction, rate of flow and total quantity of toxic or hazardous pollutants which could be discharged from the facility as a result of each condition or circumstance;
  3. Establish specific best management practices to meet the objectives identified under R317-8-7.5(5)(b)2, addressing each component or system capable of causing a release of significant amounts of toxic or hazardous pollutants to the waters of the State;
  4. The BMP program:
    - a. May reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under section 311 of the CWA and 40 CFR Part 151, and Storm Water Pollution Prevention Plans (SWPPP), and may incorporate any part of such plans into the BMP program by reference;
    - b. Shall assure the proper management of solid and hazardous waste in accordance with regulations promulgated under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA). Management practices required under RCRA regulations shall be expressly incorporated into the BMP program; and
    - c. Shall address the following points for the ancillary activities in R317-8-7.4A(3):
      - i. Statement of policy;
      - ii. Spill Control Committee;
      - iii. Material inventory;

- iv. Material compatibility;
- v. Employee training;
- vi. Reporting and notification procedures;
- vii. Visual inspections;
- viii. Preventative maintenance;
- ix. Housekeeping; and
- x. Security.

5. The BMP program must be clearly described and submitted as part of the permit application. An application which does not contain a BMP program shall be considered incomplete. Upon receipt of the application, the Executive Secretary shall approve or modify the program in accordance with the requirements of this subpart. The BMP program as approved or modified shall be included in the draft permit. The BMP program shall be subject to the applicable permit issuance requirements of R317-8, resulting in the incorporation of the program (including any modifications of the program resulting from the permit issuance procedures) into the final permit.

6. Proposed modifications to the BMP program which affect the discharger's permit obligations shall be submitted to the Executive Secretary for approval. If the Executive Secretary approves the proposed BMP program modification, the permit shall be modified in accordance with R317-8-5.6, provided that the Executive Secretary may waive the requirements for public notice and opportunity for hearing on such modification if he or she determines that the modification is not significant. The BMP program, or modification thereof, shall be fully implemented as soon as possible but not later than one year after permit issuance, modification, or revocation and reissuance unless the Executive Secretary specifies a later date in the permit.

(c) The discharger shall maintain a description of the BMP program at the facility and shall make the description available to the Executive Secretary upon request.

(d) The owner or operator of a facility subject to this subpart shall amend the BMP program in accordance with the provisions of this subpart whenever there is a change in facility design, construction, operation, or maintenance which materially affects the facility's potential for discharge of significant amounts of hazardous or toxic pollutants into the waters of the State.

(e) If the BMP program proves to be ineffective in achieving the general objective of preventing the release of significant amounts of toxic or hazardous pollutants to those waters and the specific objectives and requirements under R317-8-7.5(5)(b), the permit and/or the BMP program shall be subject to modification to incorporate revised BMP requirements.

7.6 TOXIC POLLUTANTS. References throughout the UPDES regulations establish specific requirements for discharges of toxic pollutants. Toxic pollutants are listed below:

- (1) Acenaphthene
- (2) Acrolein
- (3) Acrylonitrile
- (4) Aldrin/Dieldrin
- (5) Antimony and compounds
- (6) Arsenic and compounds
- (7) Asbestos
- (8) Benzene

- (9) Benzidine
- (10) Beryllium and compounds
- (11) Cadmium and compounds
- (12) Carbon tetrachloride
- (13) Chlordane (technical mixture and metabolites)
- (14) Chlorinated benzenes (other than dichlorobenzenes)
- (15) Chlorinated ethanes (including 1,2-dichloroethane, 1,1,1-trichloroethane, and hexachloroethane)
- (16) Chloroalkyl ethers (chloromethyl, chloroethyl, and mixed ethers)
- (17) Chlorinated naphthalene
- (18) Chlorinated phenols (other than those listed elsewhere; includes trichlorophenols and chlorinated cresols)
- (19) Chloroform
- (20) 2-chlorophenol
- (21) Chromium and compounds
- (22) Copper and compounds
- (23) Cyanides
- (24) DDT and metabolites
- (25) Dichlorobenzenes (1,2-, 1,3-, and 1,4-dichlorobenzenes)
- (26) Dichlorobenzidine
- (27) Dichloroethylenes (1,1- and 1,2-dichloroethylene)
- (28) 2,4-dimethylphenol
- (29) Dichloropropane and dichloropropene
- (30) 2,4-dimethylphenol
- (31) Dinitrotoluene
- (32) Diphenylhydrazine
- (33) Endosulfan and metabolites
- (34) Ethylbenzene
- (35) Ethylbenzene
- (36) Fluoranthene
- (37) Haloethers (other than those listed elsewhere; includes chlorophenylphenyl ethers, bromophenylphenyl ether, bis(dichloroisopropyl) ether, bis-(chloroethoxy) methane and polychlorinated diphenyl ethers)
- (38) Halomethanes (other than those listed elsewhere; includes methylene chloride, methylchloride, methylbromide, bromoform, dichlorobromomethane)
- (39) Heptachlor and metabolites
- (40) Hexachlorobutadiene
- (41) Hexachlorocyclohexane
- (42) Hexachlorocyclopentadiene
- (43) Isophorone
- (44) Lead and compounds
- (45) Mercury and compounds
- (46) Naphthalene
- (47) Nickel and compounds
- (48) Nitrobenzene
- (49) Nitrophenols (including 2,4-dinitrophenol, dinitrocresol)
- (50) Nitrosamines
- (51) Pentachlorophenol
- (52) Phenol
- (53) Phthalate esters
- (54) Polychlorinated biphenyls (PCBs)

(55) Polynuclear aromatic hydrocarbons (including benzanthracenes, benzopyrenes, benzofluranthene, chrysenes, dibenzanthracenes, and indenopyrenes)

(56) Selenium and compounds

(57) Silver and compounds

(58) 2,3,7,8-tetrachloro/dibenzo-p-dioxin (TCDD)

(59) Tetrachloroethylene

(60) Thallium and compounds

(61) Toluene

(62) Toxaphene

(63) Trichloroethylene

(64) Vinyl chloride

(65) Zinc and compounds

#### 7.7 CRITERIA FOR EXTENDING COMPLIANCE DATES FOR FACILITIES INSTALLING INNOVATIVE TECHNOLOGY

(1) Purpose and Scope. This Section establishes the criteria and procedures to be used in determining whether an industrial discharger will be granted a compliance extension for the installation of an innovative technology.

(2) Authority. The Executive Secretary, in consultation with the Administrator, may grant a compliance extension for BAT limitations to a discharger which installs an innovative technology. The innovative technology must produce either a significantly greater effluent reduction than that achieved by the best available technology economically achievable (BAT) or the same level of treatment as BAT at a significantly lower cost. The Executive Secretary is authorized to grant compliance extensions to a date no later than 2 years after the date for compliance with the effluent limitations which would otherwise be applicable.

(3) Definitions.

(a) The term "innovative technology" means a production process, a pollution control technique, or a combination of the two which satisfies one of the criteria in R317-8-7.8(4) and which has not been commercially demonstrated in the industry of which the requesting discharger is a part.

(b) The term "potential for industry-wide application" means that an innovative technology can be applied in two or more facilities which are in one or more industrial categories.

(c) The term "significantly greater effluent reduction than BAT" means that the effluent reduction over BAT produced by an innovative technology is significant when compared to the effluent reduction over best practicable control technology currently available (BPT) produced by BAT.

(d) The term "significantly lower cost" means that an innovative technology must produce a significant cost advantage when compared to the technology used to achieve BAT limitations in terms of annual capital costs and annual operation and maintenance expenses over the useful life of the technology.

(4) Request for Compliance Extension. The Executive Secretary shall grant a compliance extension to a date no later than 2 years after the date for compliance with the effluent limitations which would otherwise be applicable to a discharger that demonstrates:

(a) That the installation and operation of its proposed innovative technology at its facility will result in a significantly greater effluent reduction than BAT and has the potential for industry-wide

application; or

(b) That the installation and operation of its proposed innovative technology at its facility will result in the same effluent reduction as BAT at a significantly lower cost and has the potential for industry-wide application.

(5) Permit conditions. The Executive Secretary may include any of the following conditions in the permit of a discharger to which a compliance extension beyond the otherwise applicable date is granted:

(a) A requirement that the discharger report annually on the installation, operation and maintenance costs of the innovative technology;

(b) Alternative BAT limitations that the discharger must meet as soon as possible and not later than 2 years after the date for compliance with the effluent limitation which would otherwise be applicable if the innovative technology limitations that are more stringent than BAT are not achievable.

(6) Signatories to Request for Compliance Extension.

(a) All requests must be signed in accordance with the provisions of R317-8-3.4.

(b) Any person signing a request under paragraph (a) of this section shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(c) A professional engineer shall certify that the estimates by the applicant of the costs for the BAT control equipment and for the innovative technology are made in accordance with good engineering practice and represent, in his judgement, the best information available. The Executive Secretary may waive the requirements for certification under this subsection if, in his opinion, the cost of such certification is unreasonable when compared to the annual sales of the applicant.

(7) Supplementary Information and Record keeping.

(a) In addition to the information submitted in support of the request, the applicant shall provide the Executive Director, at his or her request, such other information as the Executive Director may reasonably require to assess the performance and cost of the innovative technology.

(b) Applicants shall keep records of all data used to complete the request for a compliance extension for the life of the permit containing the compliance extension.

(8) Procedures.

(a) The procedure for requesting a section 301(k) compliance extension is contained in R317-8-2.8. In addition, notwithstanding R317-8-2.3(3), the Executive Secretary may accept applications for such extensions after the close of the public comment period on the permit if the applicant can show that information necessary to the development of the innovation was not available at the time the permit was written and that the innovative technology can be installed and operated in time to comply no later than 2 years after the date for compliance with the effluent limitation which would otherwise be applicable.

(b) A decision on a request for a compliance extension may be appealed under the Utah Water Quality Act to the Executive Director of the Department of Environmental Quality.

#### **R317-8-8. PRETREATMENT.**

##### **8.1 APPLICABILITY**

(1) This section applies to the following:

(a) Pollutants from non-domestic sources covered by pretreatment standards which are indirectly discharged, transported by truck or rail, or otherwise introduced into POTWs;

(b) POTWs which receive wastewater from sources subject to national pretreatment standards; and

(c) Any new or existing source subject to national pretreatment standards.

(2) National pretreatment standards do not apply to sources which discharge to a sewer which is not connected to a POTW.

**8.2 DEFINITIONS.** The following definitions pertain to indirect dischargers and POTWs subject to pretreatment standards and the UPDES program.

(1) "Approved POTW pretreatment program" means a program administered by a POTW that meets the criteria established in R317-8-8.8 and 8.9 and which has been approved by the Executive Secretary in accordance with R317-8-8.10.

(2) "Indirect discharge" or "discharge" means the introduction of pollutants into a POTW from any non-domestic source regulated by the UPDES program.

(3) "Industrial user" or "user" means a source of indirect discharge.

(4) "Interference" means a discharge which, alone or in conjunction with a discharge or discharges from other sources both:

(a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

(b) Therefore is a cause of a violation of any requirement of the POTW's UPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder.

(5) "National pretreatment standard" means any regulation containing pollutant discharge limits promulgated by EPA in accordance with section 307 (b) and (c) of the CWA, which applies to industrial users. This includes prohibitive discharge limits established pursuant to R317-8-8.5.

(6) "New Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after publication of proposed Pretreatment Standards under section 307(c) of the Federal Clean Water Act which will be applicable to such source, if such standards are thereafter promulgated in accordance with that section. See R317-8-8.3 for provisions applicable to this definition.

(7) "Pass through" means a discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of violation of any requirement of the POTW's UPDES permit (including an

increase in the magnitude or duration of violation).

(8) "POTW treatment plant" means that portion of the POTW which is designed to provide treatment, including recycling and reclamation of municipal sewage and industrial waste.

(9) "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by 40 CFR 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loading that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR 403.6(e).

(10) "Pretreatment requirements" means any substantive or procedural requirements related to pretreatment, other than a National Pretreatment Standard, imposed on an industrial user.

(11) The term "Publicly Owned Treatment Works" or "POTW" means a treatment works which is owned by State or municipality within the State. This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.

(12) The term "POTW Treatment Plant" means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

(13) "Significant Industrial User"

(a) Except as provided in R317-8-8.2(11)(a)2, the term Significant Industrial User means:

1. All industrial users subject to Categorical Pretreatment standards under 40 CFR 403.6 and 40 CFR Parts 405 through 471; and

2. Any other industrial user that discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or designated as such by the Control Authority as defined in R317-8-8.11(1) on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

(b) Upon a finding that an industrial user meeting the criteria in R317-8-8.1(10)(a)2 has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Control Authority (as defined in R317-8-8.11(1)) may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, determine that such industrial user is not a significant industrial user.

(14) "Submission" means (a) a request by a POTW for approval of a

pretreatment program to the Executive Secretary or (b) a request by a POTW for authority to revise the discharge limits in categorical pretreatment standards to reflect POTW pollutant removals.

8.3 PROVISIONS APPLICABLE TO DEFINITIONS. The following provisions are applicable to the definition of "New Source" provided that:

(1) The building, structure, facility or installation is constructed at a site at which no other source is located, or

(2) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source, or

(3) The production or wastewater generating process of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

(4) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of R317-8-8.3(2) or (3) but otherwise alters, replaces, or adds to existing process or production equipment.

(5) construction of a new source as defined has commenced if the owner or operator has:

(a) Begun, or caused to begin as part of a continuous on-site construction program:

1. Any placement, assembly, or installation of facilities or equipment: or

2. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly or installation of new source facilities or equipment: or

3. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation.

8.4 LOCAL LAW. Nothing in this rule is intended to affect any pretreatment requirements, including any standards or prohibitions established by local law as long as the local requirements are not less stringent than any set forth in national pretreatment standards, or any other requirements or prohibitions established by the Executive Secretary.

#### 8.5 NATIONAL PRETREATMENT STANDARDS: Prohibited Discharges

(1) General Prohibitions. Pollutants introduced into POTWs by a non-domestic source shall not pass through the POTW or interfere with the operation or performance of the works. These general prohibitions and the specific prohibitions in R317-8-8.5(3) apply to all non-domestic sources introducing pollutants into a POTW whether or not the source is subject to other National Pretreatment Standards or any national, State or local pretreatment requirements.

(2) Affirmative Defenses. A user shall have an affirmative defense in any action brought against it alleging a violation of the general



prohibitions established in R317-8-8.5(1) and the specific prohibitions in R317-8-8.5(3)(c),(d),(e), and (g) where the user can demonstrate that:

(a) It did not know or have reason to know that its discharge, alone or in conjunction with a discharge or discharges from other sources, would cause pass through or interference; and

(b)i. A local limit designed to prevent pass through and/or interference, as the case may be, was developed in accordance with R317-8-8.5(4) for each pollutant in the user's discharge that caused pass through or interference, and the user was in compliance with each such local limit directly prior to and during the pass through or interference; or

ii. If a local limit designed to prevent pass through and/or interference, as the case may be, has not been developed in accordance with R317-8-8.5(4) for the pollutant(s) that caused the pass through or interference, the user's discharge directly prior to and during the pass through or interference did not change substantially in nature or constituents from the user's prior discharge activity when the POTW was regularly in compliance with the POTW's UPDES permit requirements and, in the case of interference, applicable requirements for sewage sludge use or disposal.

(3) Specific Prohibitions. In addition, the following pollutants shall not be introduced into a POTW:

(a) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in R315-2-1.

(b) Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such discharges;

(c) Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in interference;

(d) Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW:

(e) Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds 40 degrees C (104 degrees F) unless the Executive Secretary, upon request of the POTW, approves alternate temperature limits.

(f) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;

(g) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems; and

(h) Any trucked or hauled pollutants, except at discharge points designated by the POTW.

(4) When specific limits must be developed by POTW.

(a) POTWs developing POTW pretreatment programs shall develop and enforce specific limits to implement the prohibitions listed in R317-8-8.5(1) and R317-8-8.5(3). Each POTW with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce such limits;

(b) All other POTWs shall, in cases where pollutants contributed

by user(s) result in interference or pass-through, and such violation is likely to recur, develop and enforce specific effluent limits for industrial user(s), and all other users, as appropriate, which, together with appropriate changes in the POTW treatment plant's facilities or operation, are necessary to ensure renewed and continued compliance with the POTW's UPDES permit or sludge use or disposal practices;

(c) Specific effluent limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond.

(5) Local Limits. Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with R317-8-8.5(4), such limits shall be deemed pretreatment standards for purposes of 19-5-108 of the Utah Water Quality Act.

(6) State enforcement actions. If, within 30 days after notice of an interference or pass through violation has been sent by the Executive Secretary to the POTW, and to persons or groups who have requested such notice, the POTW fails to commence appropriate enforcement action to correct the violation, the Executive Secretary may take appropriate enforcement action.

#### 8.6 NATIONAL PRETREATMENT STANDARDS: Categorical Standards

(1) In addition to the general prohibitions in R317-8-8.4(1), all indirect dischargers shall comply with national pretreatment standards in 40 CFR Chapter I, Subchapter N. Compliance shall be required within the time specified in the appropriate subpart of Subchapter N.

(2) Industrial users may request the Executive Secretary to provide written certification on whether an industrial user falls within a particular subcategory. The Executive Secretary will act upon that request in accordance with the procedures in 40 CFR 403.6.

(3) Limitations for industrial users will be imposed in accordance with 40 CFR 403.6 (c) - (e).

8.7 REMOVAL CREDITS. POTWs may revise pollutant discharge limits specified in categorical pretreatment standards to reflect removal of pollutants by the POTW. Revisions must be made in accordance with the provisions of 40 CFR 403.7.

#### 8.8 POTW PRETREATMENT PROGRAMS: Development by POTW

(1) POTW required to develop a pretreatment program. Any POTW, or combination of POTWs operated by the same authority, with a total design flow greater than 5 million gallons per day (mgd) and receiving from industrial users pollutants which pass through or interfere with the operation of the POTW or are otherwise subject to pretreatment standards shall be required to establish a POTW pretreatment program unless the Executive Secretary exercises the option to assume local responsibility as provided for in R317-8-8.8(6)(b)(12). The Executive Secretary may require that a POTW with a design flow of 5 mgd or less develop a POTW pretreatment program if it is found that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, or other circumstances so warrant in order to prevent interference or pass through.

(2) Deadline for Program Approval. POTWs identified as being required to develop a POTW pretreatment program under R317-8-8.8(1) shall develop and submit such a program for approval as soon as possible, but in no case later than one year after written notification from the Executive Secretary of such identification. The POTW pretreatment

program shall meet the criteria set forth in R317-8-8.8(6) and shall be administered by the POTW to ensure compliance by industrial users with applicable pretreatment standards and requirements.

(3) Incorporation of Approved Programs in Permits. A POTW may develop an approvable POTW pretreatment program any time before the time limit set forth in R317-8-8.8(2). The POTW's UPDES permit will be modified under R317-8-5.6(3)(g) to incorporate the approved program conditions as enforceable conditions of the permit.

(4) Incorporation of Compliance Schedules in Permits. If the POTW does not have an approved pretreatment program at the time the POTW's existing permit is reissued or modified, the reissued or modified permit will contain the shortest reasonable compliance schedule, not to exceed three years, for the approval of the legal authority, procedures and funding required by paragraph (6) of this subsection.

(5) Cause for Reissuance or Modification of Permits. The Executive Secretary may modify or revoke and reissue a POTW's permit in order to:

(a) Put the POTW on a compliance schedule for the development of a POTW pretreatment program where the addition of pollutants into a POTW by an industrial user or combination of industrial users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment;

(b) Coordinate the issuance of a CWA Section 201 construction grant with the incorporation into a permit of a compliance schedule for POTW pretreatment program;

(c) Incorporate an approved POTW pretreatment program in the POTW permit;

(d) Incorporate a compliance schedule for the development of a POTW pretreatment program in the POTW permit.

(e) Incorporate a modification of the permit approved under R317-8-5.6; or

(f) Incorporate the removal credits established under R317-8-8.7.

(6) Pretreatment Program Requirements: Development and Implementation by POTW. A POTW pretreatment program must be based on the following legal authority and include the following procedures. These authorities and procedures shall at all times be fully and effectively exercised and implemented.

(a) Legal authority. The POTW shall operate pursuant to legal authority enforceable in Federal, State or local courts which authorizes or enables the POTW to apply and to enforce the requirements of this section. The authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by State law. At a minimum, this legal authority shall enable the POTW to:

1. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by industrial users where such contributions do not meet applicable pretreatment standards and requirements or where such contributions would cause the POTW to violate its UPDES permit;

2. Require compliance with applicable pretreatment standards and requirements by industrial users;

3. Control, through permit, order or similar means, the contribution to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements. In the case of

industrial users identified as significant under R317-8-8.2(10), this control shall be achieved through permits or equivalent individual control mechanisms issued to each such user. Such control mechanisms must be enforceable and contain, at a minimum, the following conditions:

- a. Statement of duration (in no case more than five years);
- b. Statement of non-transferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;
- c. Effluent limits based on applicable general pretreatment standards, categorical pretreatment standards, local limits and State and local law;
- d. Self-monitoring, sampling, reporting, notification and record keeping requirements, including identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards, categorical pretreatment standards, local limits, and State and local law;
- e. Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines.

4. Require the development of a compliance schedule by each industrial user for the installation of technology required to meet applicable pretreatment standards and requirements; including but not limited to the reports required in R317-8-8.11 of this section;

5. Require the submission of all notices and self-monitoring reports from industrial users as are necessary to assess and assure compliance by industrial users with pretreatment standards and requirements;

6. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the POTW shall be authorized to enter any premises of any industrial user in which a discharge source or treatment system is located or in which records are required to be kept under R317-8-8.11 of this section to assure compliance with pretreatment standards. Such authority shall be at least as extensive as the authority provided under Section 19-5-106(4) of the Utah Water Quality Act.

7. Obtain remedies for noncompliance by industrial users with any pretreatment standard and requirement. A POTW shall be able to seek injunctive relief for noncompliance and shall have authority to seek or assess civil or criminal penalties in at least the amount of \$1,000 a day for each violation of pretreatment standards and requirements by industrial users. POTWs whose approved pretreatment programs require modification to conform to the requirements of this paragraph shall submit a request for approval of a program modification in accordance with Section R317-8-8.15 by November 16, 1989.

8. Pretreatment requirements enforced through the remedies set forth in R317-8-8.8(6)(a)(7) shall include, but not be limited to, the duty to allow or carry out inspection entry or monitoring activities; any rules, regulations or orders issued by the POTW; any requirements set forth in individual control mechanisms issued by the POTW; or any reporting requirements imposed by the POTW or R317-8-8. The POTW shall have authority and procedures (after informal notice to the discharger)

immediately and effectively to halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent danger to the health or welfare of persons. The POTW shall also have authority and procedures (which shall include notice to the affected industrial user and opportunity to respond) to halt or prevent any discharge to the POTW which presents or may present a danger to the environment or which threatens to interfere with the operation of the POTW. The Executive Secretary shall have authority to seek judicial relief for noncompliance by industrial users when the POTW has acted to seek such relief but has sought a penalty which the Executive Secretary finds to be insufficient. The procedures for notice to dischargers where the POTW is seeking ex parte temporary judicial injunctive relief will be governed by applicable State or Federal law and not by this provision, and will comply with the confidentiality requirements set forth in R317-8-3.3.

(b) Procedures. The POTW shall develop and implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures shall enable the POTW to:

1. Identify and locate all possible industrial users which might be subject to the POTW pretreatment program. Any compilation, index or inventory of industrial users made under this paragraph shall be made available to the Executive Secretary upon request;

2. Identify the character and volume of pollutants contributed to the POTW by the industrial user identified under subparagraph (1) above. This information shall be made available to the Executive Secretary upon request;

3. Notify industrial users identified under R317-8-8.8(6)(b) of applicable pretreatment standards and any other applicable requirements. Within 30 days of approval of a list of significant industrial users, notify each significant industrial user of its status as such and of all requirements applicable to it as a result of such status.

4. Receive and analyze self-monitoring reports and other notices submitted by industrial users in accordance with the requirements of R317-8-8.11.

5. Randomly sample and analyze the effluent from industrial users and conduct surveillance and inspection activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. Inspect and sample the effluent from each significant industrial user at least once a year. Evaluate, at least once every two years, whether each such significant industrial user needs a plan to control slug discharges. For purposes of this subsection, a slug discharge is any discharge of a non-routine episodic nature, including but not limited to an accidental spill or a non-customary batch discharge. The results of such activities shall be available to the Executive Secretary upon request. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

- a. Description of discharge practices, including non-routine batch discharges;

- b. Description of stored chemicals;

- c. Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under R317-8-8.5 with procedures for follow-up written notification within five days;

d. If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response. The results of these activities shall be made available to the Executive Secretary upon request;

6. Investigate instances of noncompliance with pretreatment standards and requirements, as indicated in the reports and notices required by R317-8-8.11, or indicated by analysis, inspection, and surveillance activities. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions;

7. Comply with all applicable public participation requirements of State law and rules. These procedures shall include provision for at least annually providing public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of industrial users which, at anytime during the previous 12 months, were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, an industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

a. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken during a six month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;

b. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC.  $TRC = 1.4$  for BOD, TSS, fats, oil and grease, and  $1.2$  for all other pollutants except pH.

c. Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

d. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under R317-8-8.8(6)(a)8 to halt or prevent such a discharge;

e. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

f. Failure to provide within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

g. Failure to accurately report noncompliance; and

h. Any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

8. Funding. The POTW shall have sufficient resources and qualified personnel to carry out all required authorities and procedures. In some limited circumstances, funding and personnel may be delayed by the Executive Secretary when the POTW has adequate legal authority and procedures to carry out the pretreatment program requirements and a limited aspect of the program does not need to be implemented immediately.

9. Local Limits. The POTW shall develop local limits as required in section R317-8-8.5(4) or demonstrate that they are not necessary.

10. Enforcement Response Plan. The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how the POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum;

a. Describe how the POTW will investigate instances of noncompliance;

b. Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;

c. Identify (by title) the official(s) responsible for each type of response;

d. Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in R317-8-8.7(6)(a) and (b).

11. List of Industrial Users. The POTW shall prepare a list of its industrial users meeting the criteria of R317-8-8.2(10)(a). The list shall identify the criteria in R317-8-8.2(10)(a)(1) applicable to each industrial user and, for industrial users meeting the criteria in R317-8-8.2(10)(a)(2), shall also indicate whether the POTW has made a determination pursuant to R317-8-8.2(10)(b) that such industrial user should not be considered a significant industrial user. This list and any subsequent modifications thereto, shall be submitted to the Executive Secretary as a nonsubstantial program modification. Discretionary designations or de-designations by the Control Authority shall be deemed to be approved by the Executive Secretary 90 days after submission of the list or modifications thereto, unless the Executive Secretary determines that a modification is in fact a substantial modification.

12. State Program in Lieu of POTW Program. Notwithstanding the provision of R317-8-8.8(1), the State may assume responsibility for implementing the POTW pretreatment program requirements set forth in R317-8-8.8(6) in lieu of requiring the POTW to develop a pretreatment program. However, this does not preclude POTW's from independently developing pretreatment programs.

#### 8.9 POTW PRETREATMENT PROGRAMS AND/OR AUTHORIZATION TO REVISE PRETREATMENT STANDARDS: SUBMISSION FOR APPROVAL

(1) Who Approves the Program. A POTW requesting approval of a POTW pretreatment program shall develop a program description which includes the information set forth in R317-8-8.9(2)(a),(b),(c) and (d). This description shall be submitted to the Executive Secretary, who will make a determination on the request for program approval in accordance with the procedure described in R317-8-8.10.

(2) Contents of POTW Program Submission.

(a) The program submission shall contain a statement from the city attorney or a city official acting in comparable capacity or the attorney

for those POTWs which have independent legal counsel, that the POTW has authority adequate to carry out the programs described in R317-8-8.8. This statement shall:

1. Identify the provision of the legal authority under R317-8-8.8(6)(a) which provides the basis for each procedure under R317-8-8.8(6)(b);

2. Identify the manner in which the POTW will implement the program requirements set forth in R317-8-8.8 including the means by which pretreatment standards will be applied to individual industrial users (e.g., by order, permit, ordinance, etc.); and

3. Identify how the POTW intends to ensure compliance with pretreatment standards and requirements, and to enforce them in the event of noncompliance by industrial users.

- (b) The program submission shall contain a copy of any statutes, ordinances, regulations, agreements, or other authorities relied upon by the POTW for its administration of the program. This submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising and/or funding the POTW pretreatment program if approved.

- (c) The program submission shall contain a brief description, including organization charts, of the POTW organization which will administer the pretreatment program. If more than one agency is responsible for administration of the program the responsible agencies should be identified, their respective responsibilities delineated and their procedures for coordination set forth.

- (d) The program submission shall contain a description of the funding levels and full and part time manpower available to implement the program.

- (3) Conditional POTW Program Approval. The POTW may request conditional approval of the pretreatment program pending the acquisition of funding and personnel for certain elements of the program. The request for conditional approval shall meet the requirements of R317-8-8.9(2) of this subsection except that the requirements of this section may be relaxed if the submission demonstrates that:

- (a) A limited aspect of the program does not need to be implemented immediately;

- (b) The POTW had adequate legal authority and procedures to carry out those aspects of the program which will not be implemented immediately; and

- (c) Funding and personnel for the program aspects to be implemented at a later date will be available when needed. The POTW shall describe in the submission the mechanism by which this funding will be acquired. Upon receipt of a request for conditional approval, the Executive Secretary will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date the conditional approval of the POTW pretreatment program and any removal allowances granted to the POTW may be modified or withdrawn.

- (4) Content of Removal Credit Submission. The request for authority to revise categorical pretreatment standards shall contain the information required in 40 CFR 403.7.

- (5) Approval Authority Action. A POTW requesting POTW pretreatment program approval shall submit to the Executive Secretary three copies of the submission described in R317-8-8.9(2). Within 60 days after receiving a submission, the Executive Secretary shall make a preliminary



determination of whether the submission meets the requirements of this section. Upon a preliminary determination that the submission meets the requirements of this section, the Executive Secretary will:

(a) Notify the POTW that the submission has been received and is under review; and

(b) Commence the public notice and evaluation activities set forth in R317-8-8.10.

(6) Notification Where Submission is Defective. If, after review of the submission as provided for in paragraph (5) above, the Executive Secretary determines that the submission does not comply with the requirements of R317-8-8.9(2), (3) and, if appropriate, (4), the Executive Secretary will provide notice in writing to the applying POTW and each person who has requested individual notice. This notification will identify any defects in the submission and advise the POTW and each person who has requested individual notice of the means by which the POTW can comply with the applicable requirements of R317-8-8.9(2), (3) and, if appropriate, (4).

(7) Consistency With Water Quality Management Plans.

(a) In order to be approved, the POTW pretreatment program shall be consistent with any approved water quality management plan, when the plan includes management agency designations and addresses pretreatment in a manner consistent with R317-8-8. In order to assure such consistency, the Executive Secretary will solicit the review and comment of the appropriate water quality planning agency during the public comment period provided for in R317-8-8.10(2)(a)(2) prior to approval or disapproval of the program.

(b) Where no plan has been approved or when a plan has been approved but lacks management agency designations and/or does not address pretreatment in a manner consistent with this section, the Executive Secretary will solicit the review and comment of the appropriate 208 planning agency.

8.10 APPROVAL PROCEDURES FOR POTW PRETREATMENT PROGRAMS AND POTW GRANTING OF REMOVAL CREDITS. The following procedure will be adopted in approving or denying requests for approval of POTW pretreatment programs and applications for removal credit authorization.

(1) Deadline for Review of Submission. The Executive Secretary will have 90 days from the date of public notice of a submission complying with the requirements of R317-8-8.9(2), and where removal credit authorization is sought with the requirements of R317-8-8.7 and 8.8.9(4) to review the submission. The Executive Secretary shall review the submission to determine compliance with the requirements of R317-8-8.8(2) and (6), and where removal credit is sought, with R317-8-8.6. The Executive Secretary may have up to an additional 90 days to complete the evaluation of the submission if the public comment period provided for in R317-8-8.10(2) is extended beyond thirty (30) days or if a public hearing is held as provided for in R317-8-8.10(2)(a). In no event, however, will the time for evaluation of the submission exceed a total of 180 days from the date of public notice of a submission.

(2) Public Notice and Opportunity for Hearing. Upon receipt of a submission the Executive Secretary will commence his review. Within 20 days after making a determination that a submission meets the requirements of R317-8-8.9(2), and when a removal credit authorization is sought under R317-8-8.7 the Executive Secretary will:

(a) Issue a public notice of request for approval of the

submission:

1. This public notice will be circulated in a manner designed to inform interested and potentially interested persons of the submission. Procedures for the circulation of public notice will include: mailing notices of the request for approval of the submission to designated CWA section 208 planning agencies, federal and state fish, shellfish, and wildlife resource agencies; and to any other person or group who has requested individual notice, including those on appropriate mailing lists; and publication of a notice of request for approval of the submission in the largest daily newspaper within the jurisdiction served by the POTW.

2. The public notice will provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the submission;

3. All written comments submitted during the 30-day comment period will be retained by the Executive Secretary and considered in the decision on whether or not to approve the submission. The period for comment may be extended at the discretion of the Executive Secretary.

(b) The Executive Secretary will also provide an opportunity for the applicant, any affected State, any interested state or federal agency, person or group of persons to request a public hearing with respect to the submission.

1. This request for public hearing shall be filed within the thirty (30) day or extended comment period described in R317-8-8.10(2)(a)2. of this subsection and will indicate the interest of the person filing such a request and the reasons why a hearing is warranted.

2. The Executive Secretary will hold a hearing if the POTW so requests. In addition, a hearing will be held if there is a significant public interest in issues relating to whether or not the submission should be approved. Instances of doubt will be resolved in favor of holding the hearing.

3. Public notice of a hearing to consider a submission and sufficient to inform interested parties of the nature of the hearing and right to participate will be published in the same newspaper as the notice of the original request. In addition, notice of the hearing will be sent to those persons requesting individual notice.

(3) Executive Secretary Decision. At the end of the thirty (30) day or extended comment period and within the ninety (90) day or extended period provided for in R317-8-8.10(1) of this section, the Executive Secretary will approve or deny the submission based upon the evaluation in R317-8-8.10(1) and taking into consideration comments submitted during the comment period and the record of the public hearing, the Executive Secretary will so notify the POTW and each person who has requested individual notice. This notification will include suggested modification and the Executive Secretary may allow the requestor additional time to bring the submission into compliance with applicable requirements.

(4) EPA Objection to Executive Secretary's Decision. No POTW pretreatment program or authorization to grant removal allowances will be approved by the Executive Secretary if following the thirty (30)-day or extended evaluation period provided for in R317-8-8.10(2)(a)(2) and any public hearing held pursuant to this section, the Regional Administrator sets forth in writing objections to the approval of such submission and the reasons for such objections. A copy of the Regional Administrator's objections will be provided to the applicant and to each

person who has requested individual notice. The Regional Administrator shall provide an opportunity for written comments and may convene a public hearing on his or her objections. Unless retracted, the Regional Administrator's objections shall constitute a final ruling to deny approval of a POTW pretreatment program or authorization to grant removal allowances 90 days after the date the objections are issued.

(5) Notice of Decision. The Executive Secretary will notify those persons who submitted comments and participated in the public hearing, if held, of the approval or disapproval of the submission. In addition, the Executive Secretary will cause to be published a notice of approval or disapproval in the same newspapers as the original notice of request was published. The Executive Secretary will identify any authorization to modify categorical pretreatment standards which the POTW may make for removal of pollutants subject to the pretreatment standards.

(6) Public Access to Submission. The Executive Secretary will ensure that the submission and any comments on the submission are available to the public for inspection and copying.

#### 8.11 REPORTING REQUIREMENTS FOR POTWS AND INDUSTRIAL USERS

(1) Definition. "Control Authority" means the POTW if the POTW's submission for its pretreatment program has been approved or the Executive Secretary if the submission has not been approved.

(2) Reporting Requirement for Industrial Users Upon Effective Date of Categorical Pretreatment Standards Baseline Report. Within 180 days after the effective date of a categorical pretreatment standard or 180 days after the final administrative decision made upon a category determination submission under R317-8-8.6, whichever is later, existing industrial users subject to such categorical pretreatment standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the Control Authority a report which contains the information listed in paragraphs (a) through (g) of this Section. Where reports containing this information have already been submitted to the Executive Secretary, the industrial user will not be required to submit this information again. At least 90 days prior to commencement of discharge, new sources and sources that become Industrial Users subsequent to promulgation of an applicable categorical standard, shall be required to submit to the Control Authority a report which contains the information listed in R317-8-8.11(2)(a), (b), (c), (d) and R317-8-8.11(3). New sources shall also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New Sources shall give estimates of the information requested in R317-8-8.11(2)(d) and (e).

(a) Identifying Information. The user shall submit the name and address of the facility, including the name of the operator and owners.

(b) Permits. The user shall submit a list of any environmental control permits held by or for the facility.

(c) Description of Operations. The user shall submit a brief description of the nature, average rate of production and Standard Industrial Classification of the operation carried out by the industrial user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated process.

(d) Flow measurement. The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following: regulated process streams and other streams as necessary to allow use of the combined wastestream

formula (see Section 40 CFR 403.6(e)). The Control Authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

(e) Measurement of pollutants.

1. The user shall identify the pretreatment standards applicable to each regulated process.

2. The user shall submit the results of sampling and analysis identifying the nature and concentration, or mass, of regulated pollutants in the discharge from each regulated process when required by the Control Authority. Both daily maximum and average concentration or mass, where required shall be reported. The sample shall be representative of daily operations.

3. A minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques where feasible. The Control authority may waive flow-proportional composite sampling for any Industrial Users that demonstrate that flow-proportional sampling is infeasible. In such cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of four grab samples where the User demonstrates that this will provide a representative sample of the effluent being discharged.

4. The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of R317-8-8.11.

5. Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula in order to evaluate compliance with the pretreatment standards. When an alternate concentration or mass limit has been calculated in accordance with the combined wastestream formula this adjusted limit along with supporting data shall be submitted to the Control Authority.

6. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR 136. When 40 CFR 136 does not contain sampling or analytical techniques for the pollutant in question, or when the Administrator determines that the 40 CFR 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator.

7. The Control Authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.

8. The baseline report shall indicate the time, date and place of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

(f) Certification. The user shall submit a statement, reviewed by an authorized representative of the industrial user and certified by a qualified professional, indicating whether pretreatment standards are

being met on a consistent basis and, if not, whether additional operation and maintenance and/or additional pretreatment is required for the industrial user to meet the pretreatment standards and requirements.

(g) Compliance Schedule. If additional pretreatment and/or operation and maintenance are required to meet the pretreatment standards, the user shall submit the shortest schedule by which the industrial user will provide such additional pretreatment and/or operation and maintenance. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard.

1. When the industrial user's categorical pretreatment standard has been modified by a removal allowance under R317-8-8.7, the combined wastestream formula under R317-8-8.6, or by a fundamentally different factors variance under R317-8-8.15 at the time the user submits the report required by R317-8-8.11(2), the information required by R317-8-8.11(2)(f) and (g) shall pertain to the modified limits.

2. If the categorical pretreatment standard is modified by a removal allowance under R317-8-8.7, the combined wastestream formula under R317-8-8.6, or by a fundamentally different factors variance under R317-8-8.15 after the user submits the report required by R317-8-8.11(2) of this subsection, any necessary amendments to the information requested by R317-8-8.11(2)(f) and (g) shall be submitted by the user to the Control Authority within 60 days after the modified limit is approved.

(3) Compliance Schedule for Meeting Categorical Pretreatment Standards. The following conditions shall apply to the schedule required by R317-8-8.11(2)(g):

(a) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical pretreatment standards;

(b) No increment referred to in paragraph (a) of above shall exceed 9 months;

(c) Not later than 14 days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the Control Authority including, at a minimum, whether or not it complied with the increment of progress to be met on that date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than 9 months elapse between such progress reports to the Control Authority;

(4) Report on Compliance with Categorical Pretreatment Standard Deadline. Within 90 days following the date for final compliance with applicable categorical pretreatment standards or in the case of a new source following commencement of the introduction of wastewater into the POTW, any industrial user subject to pretreatment standards and requirements shall submit to the Control Authority a report containing the information described in R317-8-8.11(2)(d, e, and f). For industrial users subject to equivalent mass or concentration limits established by the Control Authority in accordance with the procedures in R317-8-8.6 this report shall contain a reasonable measure of the user's long term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant

discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period.

(5) Periodic Reports on Continued Compliance.

(a) Any industrial user subject to a categorical pretreatment standard after the compliance date of such pretreatment standard or, in the case of a new source, after commencement of the discharge into the POTW, shall submit to the Control Authority during the months of June and December, unless required more frequently in the pretreatment standard or by the Executive Secretary, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical pretreatment standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in R317-8-8.11(2)(d) of this section except that the Control Authority may require more detailed reporting of flows. At the discretion of the Control Authority and in consideration of such factors as local high or low flow rates, holidays and budget cycles, the Control Authority may agree to alter the months during which the above reports are to be submitted.

(b) When the Control Authority has imposed mass limitations on industrial users as provided by R317-8-8.6, the report required by paragraph (a) of this subsection shall indicate the mass of pollutants regulated by pretreatment standards in the discharge from the industrial user.

(c) For industrial users subject to equivalent mass or concentration limits established by the Control authority in accordance with the procedures in R317-8-8.6 the report required by R317-8-8.11(5)(a) shall contain a reasonable measure of the user's long term production rate. For all other industrial users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by R317-8-11(5)(a) shall include the user's actual average production rate for the reporting period.

(6) Notice of Potential Problems Including Slug Loading. All categorical and non-categorical industrial users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings, as defined in R317-8-8.5.

(7) Monitoring and Analysis to Demonstrate Continued Compliance.

(a) The reports required in R317-8-8.11(2), 8.10(4) and (5) shall contain the results of sampling and analysis of the discharge, including the flow, the nature and concentration, or production and mass where requested by the Control Authority, of pollutants contained therein which are limited by the applicable pretreatment standards. This sampling and analysis may be performed by the Control Authority in lieu of the industrial user. Where the POTW performs the required sampling and analysis in lieu of the industrial user, the user will not be required to submit the compliance certification. In addition, where the POTW itself collects all the information required for the report, including flow data, the industrial user will not be required to submit the report.

(b) If sampling performed by an industrial user indicates a violation, the user shall notify the Control Authority within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within 30 days after becoming aware of the

violation, except the industrial user is not required to resample if;

1. The Control Authority performs sampling at the industrial user at a frequency of at least once per month, or

2. The Control Authority performs sampling at the user between the time when the user performs its initial sampling and the time when the user receives the results of this sampling.

(c) The reports required in this section shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data is representative of conditions occurring during the reporting period. The Control Authority shall require that frequency of monitoring necessary to assess and assure compliance by industrial users with applicable Pretreatment Standards and Requirements.

(d) All analyses shall be performed in accordance with procedures contained in 40 CFR 136 or with any other test procedures approved by the Administrator. Sampling shall be performed in accordance with the techniques approved by the Administrator. Where 40 CFR 136 does not include sampling or analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties and approved by the Administrator.

(e) If an industrial user subject to the reporting requirement in R317-8-8.11(5) monitors any pollutant more frequently than required by the Control Authority, using the procedures prescribed in, R317-8-8.11(7)(d), the results of this monitoring shall be included in the report.

(8) Compliance Schedule for POTWs. The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW pretreatment program.

- (a) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a POTW pretreatment program.

- (b) No increment referred to in paragraph (a) above shall exceed nine months.

- (c) Not later than 14 days following each date in the schedule and the final date for compliance, the POTW shall submit a progress report to the Executive Secretary including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the POTW to return to the schedule established. In no event shall more than nine months elapse between such progress reports to the Executive Secretary.

- (9) Reporting requirements for industrial user not subject to categorical pretreatment standards. The Control Authority shall require appropriate reporting from those industrial users with discharges that are not subject to categorical pretreatment standards. Significant Noncategorical Industrial Users shall submit to the Control Authority at least once every six months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. These reports shall be based on sampling and analysis performed in the period covered by the report and performed in accordance with the techniques described in 40 CFR 136. Where 40 CFR 136 does not contain sampling or analytical

techniques for the pollutant in question, or where the Executive Secretary determines that the 40 CFR 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other persons, approved by the Administrator. This sampling and analysis may be performed by the Control Authority in lieu of the significant noncategorical industrial user. Where the POTW itself collects all the information required for the report, the noncategorical significant industrial user will not be required to submit the report.

(10) Annual POTW reports. POTWs with approved pretreatment programs shall provide the Executive Secretary with a report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's pretreatment program and at least annually thereafter, and shall include, at a minimum, the following:

(a) An updated list of the POTW's industrial users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which industrial users are subject to categorical pretreatment standards and specify which standards are applicable to each industrial user. The list shall indicate which industrial users are subject to local standards that are more stringent than the categorical pretreatment standards. The POTW shall also list the industrial users that are subject only to local requirements.

(b) A summary of the status of industrial user compliance over the reporting period;

(c) A summary of compliance and enforcement activities (including inspections) conducted by the POTW during the reporting period; and

(d) Any other relevant information requested by the Executive Secretary.

(11) Notification of changed discharge. All industrial users shall promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under R317-8-8.10.

(12) Signatory Requirements for Industrial User Reports. The reports required by R317-8-8.11(2), (4) and (5) shall include the certification statement as set forth in 40 CFR and 403.6(2)(B). and shall be signed as follows;

(a) By a responsible corporate officer if the industrial user submitting the reports is a corporation. A responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) By a general partner or proprietor if the industrial user



submitting the reports is a partnership or sole proprietorship respectively.

(c) By a duly authorized representative of the individual designated in paragraph (a) or (b) above, if;

1. The authorization is made in writing by the individual described in paragraph (a) or (b) above.

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the Industrial Discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and

3. The written authorization is submitted to the Control Authority.

(d) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements must be submitted to the Control Authority prior to or together with any reports to be signed by an authorized representative.

(13) Signatory Requirements for POTW Reports. Reports submitted to the Executive Secretary by the POTW in accordance with R317-8-8.11(8), (9) and (10) shall be signed by a principal executive officer, ranking elected official or other duly authorized employee if such employee is responsible for overall operation of the POTW.

(14) Provisions Governing Fraud and False Statements. The reports and other documents required to be submitted or maintained by R317-8-8.11(2), (4), (5), (8), (9), (12) and (13) shall be subject to the Utah Water Quality Act as amended and all other State and Federal laws pertaining to fraud and false statements.

(15) Record-Keeping Requirements.

(a) Any industrial user and POTW subject to the reporting requirements established in this subsection shall maintain records of all information resulting from any monitoring activities required by this section. Such records shall include for all samples:

1. The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;
2. The dates and times analyses were performed;
3. Who performed the analyses;
4. The analytical techniques or methods used; and
5. The results of the analyses.

(b) Any industrial user or POTW subject to these reporting requirements established shall be required to retain for a minimum of 3 years any records of monitoring activities and results, whether or not such monitoring activities are required by this section, and shall make such records available for inspection and copying by the Executive Secretary, and by the POTW in the case of an industrial user. This period of retention shall be extended during the course of any unresolved litigation regarding the industrial user or POTW or when requested by the Executive Secretary.

(c) A POTW to which reports are submitted by an industrial user pursuant to R317-8-8.11(2)(4), and (5) shall retain such reports for a minimum of 3 years and shall make such reports available for inspection and copying by the Executive Secretary. This period of retention shall be extended during the course of any unresolved litigation regarding the

discharge of pollutants by the industrial user or the operation of the POTW pretreatment program or when requested by the Executive Secretary.

(d) Notification to POTW by Industrial User.

1. The industrial user shall notify the Executive Secretary, the POTW, and State hazardous waste authorities in writing of any discharge into the POTW of a substance, which if otherwise disposed of, would be a hazardous waste under R315-2-1. Such notification must include the name of the hazardous waste as set forth in R315-2-1, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the industrial user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve months. All notifications must take place within 180 days of the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under R317-8-8.11(11). The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of R317-8-8.11(2), (4), and (5).

2. Dischargers are exempt from the requirements of R317-8-8.11(15)(d) during a calendar month in which they discharge no more than fifteen kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in R315-2-1. Discharge of more than fifteen kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 R315-2-1, requires a one-time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.

3. In the case of any new regulations adopted by EPA or the Utah Solid and Hazardous Waste Board identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

4. In the case of notification made under R317-8-8.16(d)1, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

8.12 CONFIDENTIALITY OF INFORMATION. Any information submitted to the Executive Secretary pursuant to these regulations may be claimed as confidential by the person making the submission. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions, or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the Executive Secretary may make the information available

to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in the 40 CFR Part 2. Information and data provided to the Executive Secretary pursuant to this part which is effluent data shall be available to the public without restriction. All other information which is submitted to the State or POTW shall be available to the public at least to the standards of 40 CFR 2.302.

8.13 NET/GROSS CALCULATION. Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in an industrial user's intake water in accordance with this section.

(1) Application. Any industrial user wishing to obtain credit for intake pollutants must make application to the Control Authority. Upon request of the industrial user, the applicable standard will be calculated on a "net" basis (i.e., adjusted to reflect credit for pollutants in the intake water) if the requirements of R317-8-8.13(2) and (3) are met.

(2) Criteria

a. The industrial user must demonstrate that the control system it proposes or uses to meet applicable categorical pretreatment standards would, if properly installed and operated, meet the standards in the absence of pollutants in the intake water.

b. Credit for generic pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS) and oil and grease should not be granted unless the industrial user demonstrates that the constituents of the generic measure in the user's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

c. Credit shall be granted only to the extent necessary to meet the applicable categorical pretreatment standard(s), up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with standard(s) adjusted under this section.

d. Credit shall be granted only if the user demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The Control Authority may waive this requirement if it finds that no environmental degradation will result.

(3) The applicable categorical pretreatment standards contained in 40 CFR Subchapter N specifically provide that they shall be applied on a net basis.

8.14 UPSET PROVISION

(1) Definition. "Upset" as used in this subsection means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) Effect of an Upset. An upset constitutes an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of R317-8-8.14(3) are met.

(3) Conditions Necessary for a Demonstration of Upset. An industrial user who wishes to establish the affirmative defense of upset

shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An upset occurred and the industrial user can identify the cause(s) of the upset;

(b) The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures;

(c) The industrial user has submitted the following information to the POTW and Control Authority within 24 hours of becoming aware of the upset or if this information is provided orally, a written submission within five days:

1. A description of the indirect discharge and cause of noncompliance;

2. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue;

3. Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.

4. Burden of Proof. In any enforcement proceeding the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

5. Reviewability of Agency Consideration of Claims of Upset. In the usual exercise of prosecutorial discretion, State enforcement personnel will review any claims that noncompliance was caused by an upset. No determinations made in the course of the review constitutes final agency action subject to judicial review. Industrial users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

6. User responsibility in case of upset. The industrial user shall control production or discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

#### 8.15 BYPASS PROVISION

(1) Definitions.

(a) "Bypass" means the intentional diversion of wastestreams from any portion of an industrial user's treatment facility.

(b) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) Bypass not violating applicable pretreatment standards or requirements. An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of R317-8-8.15(3) and (4).

(3) Notice.

(a) If an industrial user knows in advance of the need for a

bypass, it shall submit prior notice to the Control Authority, if possible at least ten days before the date of the bypass.

(b) An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the Control Authority within 24 hours from the time the industrial user becomes aware of the bypass. A written submission shall also be provided within 5 days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times and if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Control Authority may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(4) Prohibition of bypass.

(a) Bypass is prohibited and the Control Authority may take enforcement action against an industrial user for a bypass, unless:

1. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

2. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated waters, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

3. The industrial user submitted notices as required under R317-8-8.15(3).

(b) The Control Authority may approve an anticipated bypass, after considering its adverse effects, if the Control Authority determines that it will meet the three conditions listed in R317-8-8.15(4)(A).

8.16 MODIFICATION of POTW PRETREATMENT PROGRAMS

(1) General. Either the Executive Secretary or a POTW with an approved POTW Pretreatment Program may initiate program modification at any time to reflect changing conditions at the POTW. Program modification is necessary whenever there is a significant change in the operation of a POTW pretreatment program that differs from the information in the POTW's submission, as approved under Section R317-8-8.10.

(2) Procedures. POTW pretreatment program modifications shall be accomplished as follows:

(a) For substantial modifications, as defined in R317-8-8.16(3):

1. The POTW shall submit to the Executive Secretary a statement of the basis for the desired modification, a modified program description or such other documents the Executive Secretary determines to be necessary under the circumstances.

2. The Executive Secretary shall approve or disapprove the modification based on its regulatory requirements.

3. The modification shall be incorporated into the POTW's UPDES permit after approval. The permit will be modified to incorporate the approved modification in accordance with R317-8-5.6(3)(g).

4. The modification shall become effective upon approval by the Executive Secretary. Notice of approval shall be published in the same newspaper as the notice of the original request for approval of the modification.

(b) The POTW shall notify the Executive Secretary of any other (i.e. non-substantial) modifications to its pretreatment program at least 30 days prior to when they are to be implemented by the POTW, in a statement similar to that provided for in R317-8-8.16(2)(a)1. Such non-substantial program modifications shall be deemed to be approved by the Executive Secretary, unless the Executive Secretary determines that a modification submitted is in fact a substantial modification, 90 days after the submission of the POTW's statement. Following such "approval" by the Executive Secretary such modifications shall be incorporated in the POTW's permit in accordance with R317-8-5.6(2)(g). If the Executive Secretary determines that a modification reported by a POTW is in fact a substantial modification, the Executive Secretary shall notify the POTW and initiate the procedures in R317-8-8.16(2)(a).

(3) Substantial modifications.

(a) The following are substantial modifications for purposes of this section:

1. Changes to the POTW's legal authorities;
2. Changes to local limits, which result in less stringent local limits;
3. Changes to the POTW's control mechanism;
4. Changes to the POTW's method for implementing categorical Pretreatment Standards (e.g., incorporation by reference, separate promulgation, etc.);
5. A decrease in the frequency of self-monitoring or reporting required of industrial users;
6. A decrease in the frequency of industrial user inspections or sampling by the POTW;
7. Changes to the POTW's confidentiality procedures;
8. Significant reductions in the POTW's Pretreatment Program resources (including personnel commitments, equipment, and funding levels); and
9. Changes in the POTW's sludge disposal and management practices.

(b) The Executive Secretary may designate other specific modifications in addition, to those listed in R317-8-8.16(3)(a), as substantial modifications.

(c) A modification that is not included in R317-8-8.16(3)(a) is nonetheless a substantial modification for purposes of this section if the modification:

1. Would have a significant impact on the operation of the POTW's Pretreatment Program;
  2. Would result in an increase in pollutant loadings at the POTW;
- or
3. Would result in less stringent requirements being imposed on industrial users of the POTW.

8.17 VARIANCES FROM CATEGORICAL PRETREATMENT STANDARDS FOR FUNDAMENTALLY DIFFERENT FACTORS (FDF). A variance may be granted, using the procedures of 40 CFR 403.13, to an industrial user if data specific to the user indicates it presents factors fundamentally different from those considered by EPA in developing the limit at issue.

**KEY: water pollution, discharge permits**

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